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## **EXHIBIT 95**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

IN RE: )  
 ) CHAPTER 11  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P., ) CASE NO.  
 ) 19-34054-sgj11  
Debtor. )

)  
HIGHLAND CAPITAL )  
MANAGEMENT, L.P., )  
 ) Adversary Proceeding  
Plaintiff, ) No. 20-3190-sgj11  
 )  
v. )  
 )  
JAMES D. DONDERO, )  
 )  
Defendant. )

REMOTE VIDEO-RECORDED DEPOSITION OF  
JAMES D. DONDERO  
TUESDAY, JANUARY 5, 2021

REPORTED BY:

MICHAEL E. MILLER, FAPR, RDR, CRR

JOB NO. 188154

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<p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Tuesday, January 5, 2021</p> <p>6 9:50 a.m. CST</p> <p>7</p> <p>8</p> <p>9 REMOTE ORAL VIDEO-RECORDED DEPOSITION</p> <p>10 OF JAMES D. DONDERO, held via Zoom conference</p> <p>11 pursuant to the <b>Federal Rules of Civil Procedure</b></p> <p>12 before Michael E. Miller, Fellow of the Academy</p> <p>13 of Professional Reporters, Registered Diplomate</p> <p>14 Reporter, Certified Realtime Reporter and Notary</p> <p>15 Public in and for the State of Texas.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>4 Attorneys for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, NY 10017</p> <p>7 BY: JOHN MORRIS, ESQ.</p> <p>8 HAYLEY WINOGRAD, ESQ.</p> <p>9 JEFFREY POMERANTZ, ESQ.</p> <p>10 GREGORY DEMO, ESQ.</p> <p>11 IRA KHARASCH, ESQ.</p> <p>12</p> <p>13 LATHAM &amp; WATKINS</p> <p>14 Attorney For UBS</p> <p>15 885 Third Avenue</p> <p>16 New York, NY 10022</p> <p>17 BY: SHANNON MCLAUGHLIN, ESQ.</p> <p>18 ZACHARY PROULX, ESQ.</p> <p>19</p> <p>20 JENNER &amp; BLOCK</p> <p>21 Attorney for Redeemer Committee</p> <p>22 353 North Clark Street</p> <p>23 Chicago, IL 60654</p> <p>24 BY: TERRI MASCHERIN, ESQ.</p> <p>25</p>
Page 4	Page 5
<p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 SIDLEY AUSTIN</p> <p>4 Attorneys For the Creditors Committee</p> <p>5 2021 McKinney Avenue</p> <p>6 Dallas, TX 75201</p> <p>7 BY: PENNY REID, ESQ.</p> <p>8 PAIGE MONTGOMERY, ESQ.</p> <p>9 MATTHEW CLEMENTE, ESQ.</p> <p>10 ALYSSA RUSSELL, ESQ.</p> <p>11</p> <p>12 KING &amp; SPALDING</p> <p>13 Attorney for Highland CLO Funding, Ltd.</p> <p>14 500 West 2nd Street</p> <p>15 Austin, TX 78701</p> <p>16 BY: REBECCA MATSUMURA, ESQ.</p> <p>17</p> <p>18 BONDS ELLIS EPPICH SCHAFER JONES</p> <p>19 Attorneys for James Dondero</p> <p>20 420 Throckmorton Street</p> <p>21 Fort Worth, TX 76102</p> <p>22 BY: JOHN BONDS, ESQ.</p> <p>23 BRYAN ASSINK, ESQ.</p> <p>24</p> <p>25</p>	<p>1</p> <p>2 REMOTE APPEARANCES:</p> <p>3 DEBEVOISE &amp; PLIMPTON</p> <p>4 Attorneys for HarbourVest Partners</p> <p>5 919 Third Avenue</p> <p>6 New York, NY 10022</p> <p>7 BY: ERICA WEISGERBER, ESQ.</p> <p>8</p> <p>9 CARLYON CICA CHARTERED</p> <p>10 Attorneys for Integrated Financial</p> <p>11 Associates Inc.</p> <p>12 265 East Warm Springs Road</p> <p>13 Las Vegas, NV 89119</p> <p>14 BY: CANDACE CARLYON, ESQ.</p> <p>15</p> <p>16 ALSO PRESENT:</p> <p>17 La Asia Canty, Paralegal</p> <p>18 Pachulski Stang Ziehl &amp; Jones LLP</p> <p>19</p> <p>20 VIDEOGRAPHER:</p> <p>21 Rick Richey, TSG Reporting Inc.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

<p style="text-align: right;">Page 6</p> <p>1</p> <p>2</p> <p>3 PROCEEDINGS</p> <p>4 January 5, 2021, 9:50 a.m. CST</p> <p>5</p> <p>6 THE VIDEOGRAPHER: Good morning,</p> <p>7 ladies and gentlemen. My name is Rick Richey.</p> <p>8 I'm a legal videographer in association with</p> <p>9 TSG Reporting Inc.</p> <p>10 Due to the severity of the COVID-19</p> <p>11 and following the practice of social distancing,</p> <p>12 I will not be in the same room with the witness.</p> <p>13 Instead, I will record this videotaped deposition</p> <p>14 remotely.</p> <p>15 The court reporter, Mike Miller, also</p> <p>16 will not be in the same room and will swear the</p> <p>17 witness remotely.</p> <p>18 Do all parties stipulate to the</p> <p>19 validity of this video recording and remote</p> <p>20 swearing and that it will be admissible in the</p> <p>21 courtroom as if it had been taken following Rule</p> <p>22 30 of the Federal Rules of Civil Procedure and</p> <p>23 the state rules where the case is pending?</p> <p>24 Do all agree?</p> <p>25 MR. MORRIS: Yes.</p>	<p style="text-align: right;">Page 7</p> <p>1</p> <p>2 MR. BONDS: Yes.</p> <p>3 MR. MORRIS: Does anyone not agree?</p> <p>4 (Pause.)</p> <p>5 MR. MORRIS: Having heard nothing,</p> <p>6 let's proceed. Thank you.</p> <p>7 THE VIDEOGRAPHER: This will be the</p> <p>8 start of Media No. 1 in the video-recorded</p> <p>9 deposition of James Dondero. Today's date is</p> <p>10 January 5th, 2021. It's 9:52 a.m. Central</p> <p>11 Standard Time.</p> <p>12 The case is In re Highland Capital</p> <p>13 Management LP, Debtor, Chapter 11, Case</p> <p>14 No. 19-34054-sgj11 in the United States</p> <p>15 Bankruptcy Court for the Northern District of</p> <p>16 Texas, Dallas Division.</p> <p>17 The attorneys' appearances have</p> <p>18 already been noted on the steno record, so would</p> <p>19 the court reporter please swear the witness.</p> <p>20 MR. BONDS: Wait just one second.</p> <p>21 There's an adversary proceeding that this case is</p> <p>22 actually -- or this deposition is actually being</p> <p>23 taken in. It's 20-03190-sgj. Thank you.</p> <p>24 ///</p> <p>25 ///</p>
<p style="text-align: right;">Page 8</p> <p>1 J. DONDERO</p> <p>2</p> <p>3 JAMES D. DONDERO,</p> <p>4 having been duly sworn,</p> <p>5 testified as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Good morning, Mr. Dondero. Can you</p> <p>11 hear me okay?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. My name is John Morris from</p> <p>14 Pachulski Stang Ziehl &amp; Jones, counsel for the</p> <p>15 debtor.</p> <p>16 Where are you located this morning,</p> <p>17 sir?</p> <p>18 A. Highland Capital Management's</p> <p>19 conference room, same as last time.</p> <p>20 Q. Is there anybody in the room with you</p> <p>21 right now?</p> <p>22 A. No.</p> <p>23 Q. Do you have a telephone with you?</p> <p>24 A. Yes.</p> <p>25 Q. Is the phone off?</p>	<p style="text-align: right;">Page 9</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Are you aware that the debtor sent a</p> <p>4 letter to your lawyers instructing you not to be</p> <p>5 on the premises after December 31st, 2020?</p> <p>6 A. Yes.</p> <p>7 Q. Did you get the debtor's permission</p> <p>8 to enter the premises this morning?</p> <p>9 A. Implicitly for this depo, I believe.</p> <p>10 Q. Okay. Did you get any explicit</p> <p>11 consent or approval for you to be in the offices</p> <p>12 this morning?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Did you ask or did anybody on your</p> <p>15 behalf ask the debtors if you could participate</p> <p>16 in today's deposition at the Highland offices?</p> <p>17 A. I don't know.</p> <p>18 Q. You're not aware of that, right?</p> <p>19 A. Correct.</p> <p>20 Q. Okay. John Bonds is defending you</p> <p>21 today; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And he's at the Bonds Ellis firm,</p> <p>24 right?</p> <p>25 A. Yes.</p>

<p>Page 10</p> <p>1 J. DONDERO</p> <p>2 Q. And the Bonds Ellis firms represents</p> <p>3 you in your individual capacity, correct?</p> <p>4 A. Yes.</p> <p>5 Q. Is there any other law firm that</p> <p>6 represents you in your individual capacity in the</p> <p>7 Highland bankruptcy or in the adversary</p> <p>8 proceeding?</p> <p>9 A. I don't believe so.</p> <p>10 Q. Okay. Does the Bonds Ellis firm</p> <p>11 represent any entity in which you have an</p> <p>12 ownership or control interest, or do they just</p> <p>13 represent you in your individual capacity?</p> <p>14 A. I don't know for sure.</p> <p>15 Q. Okay. But as you sit here right now,</p> <p>16 do you have any reason to believe that the Bonds</p> <p>17 Ellis firm represents anybody other than you in</p> <p>18 your individual capacity in connection with the</p> <p>19 bankruptcy case?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. You understand that we're here</p> <p>22 today for your deposition, right?</p> <p>23 A. Yes.</p> <p>24 Q. And do you understand that today's</p> <p>25 deposition is being taken in connection with the</p>	<p>Page 11</p> <p>1 J. DONDERO</p> <p>2 debtor's motion for – (audio malfunction) –</p> <p>3 (Clarification requested by the</p> <p>4 stenographer.)</p> <p>5 MR. MORRIS: I'll ask it again.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Mr. Dondero, do you understand that</p> <p>8 today's deposition is being taken in connection</p> <p>9 with the debtor's motion for preliminary</p> <p>10 injunction against you?</p> <p>11 A. Yes.</p> <p>12 Q. Do you intend to participate in the</p> <p>13 hearing on the debtor's motion for preliminary</p> <p>14 injunction?</p> <p>15 MR. BONDS: Objection, form.</p> <p>16 MR. MORRIS: You can answer.</p> <p>17 A. I don't know.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Do you intend to make – do you</p> <p>20 intend to testify at the debtor's hearing for</p> <p>21 preliminary injunction?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. I don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. You may or you may not; is that</p>
<p>Page 12</p> <p>1 J. DONDERO</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. Are you on any drugs or any</p> <p>5 medication right now?</p> <p>6 A. No.</p> <p>7 Q. Is there anything that you're aware</p> <p>8 of that might affect your memory today?</p> <p>9 A. No.</p> <p>10 Q. Are you aware of anything that would</p> <p>11 prevent you from testifying competently today to</p> <p>12 the best of your ability?</p> <p>13 A. No.</p> <p>14 Q. You understand that you're under oath</p> <p>15 right now?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware that on December 10th</p> <p>18 the debtor obtained a temporary restraining order</p> <p>19 against you?</p> <p>20 A. Roughly.</p> <p>21 Q. Okay. Did you ever personally read a</p> <p>22 copy of the temporary restraining order?</p> <p>23 A. No.</p> <p>24 Q. So you've never seen the order</p> <p>25 itself; is that right?</p>	<p>Page 13</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. Correct.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you have an understanding of what</p> <p>6 the order restrains you from doing?</p> <p>7 A. Just in the most general sense.</p> <p>8 Q. Tell me your understanding of what</p> <p>9 the temporary order restrains you from doing.</p> <p>10 A. Talking to the independent board</p> <p>11 directly or talking directly to Highland</p> <p>12 employees.</p> <p>13 Q. Is there any other aspect of the</p> <p>14 temporary restraining order that you're aware of</p> <p>15 that would otherwise constrain or restrain your</p> <p>16 conduct?</p> <p>17 A. Those are the points I remember.</p> <p>18 Q. Do you recall that before the Court</p> <p>19 entered the temporary restraining order, it held</p> <p>20 a hearing to consider the debtor's request?</p> <p>21 A. I – I don't know.</p> <p>22 Q. Did you listen to the hearing?</p> <p>23 A. No.</p> <p>24 Q. Did you read a transcript of the</p> <p>25 hearing?</p>

<p>Page 14</p> <p>1 J. DONDERO</p> <p>2 A. No.</p> <p>3 Q. Do you respect the Court's authority</p> <p>4 in this case?</p> <p>5 MR. BONDS: Objection, form.</p> <p>6 A. Yes.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is there any particular reason why</p> <p>9 you didn't take the time to read the Court's</p> <p>10 temporary restraining order that was entered</p> <p>11 against you?</p> <p>12 A. No.</p> <p>13 Q. James Seery is a member of the board</p> <p>14 of Strand Advisors, the debtor's general partner,</p> <p>15 right?</p> <p>16 A. Yes.</p> <p>17 Q. And you've been aware of that since</p> <p>18 at least last January, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you're also aware that Mr. Seery</p> <p>21 is the debtor's CEO and CRO, right?</p> <p>22 A. Yes.</p> <p>23 Q. And you've been aware of that since</p> <p>24 last July, correct?</p> <p>25 A. Yes.</p>	<p>Page 15</p> <p>1 J. DONDERO</p> <p>2 Q. Did you ever review the declaration</p> <p>3 that Mr. Seery submitted in connection with the</p> <p>4 debtor's motion for a temporary restraining order</p> <p>5 against you?</p> <p>6 MR. BONDS: Objection, form.</p> <p>7 A. No.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Do you know what Mr. Seery alleged in</p> <p>10 his declaration – withdrawn.</p> <p>11 Do you know the substance of what</p> <p>12 Mr. Seery alleged in his declaration in support</p> <p>13 of the debtor's motion for the TRO?</p> <p>14 A. No.</p> <p>15 Q. Did you care that the debtor was</p> <p>16 seeking a TRO against you?</p> <p>17 A. I didn't think about it.</p> <p>18 Q. Have you thought about it since the</p> <p>19 order was entered?</p> <p>20 A. Not really.</p> <p>21 Q. Okay. You didn't submit a</p> <p>22 declaration of your own in opposition of the</p> <p>23 motion for TRO, right?</p> <p>24 A. I don't know.</p> <p>25 Q. You don't recall signing anything, do</p>
<p>Page 16</p> <p>1 J. DONDERO</p> <p>2 you?</p> <p>3 A. I've signed a lot of things, but</p> <p>4 I'm – I don't recall an opposition.</p> <p>5 Q. Let's talk about some of the events</p> <p>6 that led to the entry of the TRO.</p> <p>7 The debtor serves – (audio</p> <p>8 malfunction) –</p> <p>9 (Clarification requested by the</p> <p>10 stenographer.)</p> <p>11 THE WITNESS: I didn't touch the</p> <p>12 microphone at this end and it's six inches or</p> <p>13 eight inches from my mouth.</p> <p>14 MR. MORRIS: Yeah, let's try again,</p> <p>15 Mr. Dondero. Thank you.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. The debtor serves as the portfolio</p> <p>18 manager for certain collateralized loan</p> <p>19 obligation vehicles; isn't that right?</p> <p>20 A. I don't want to testify to that.</p> <p>21 Q. Does the – does the debtor manage</p> <p>22 CLOs?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 MR. MORRIS: Withdrawn.</p> <p>25 ///</p>	<p>Page 17</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Can we agree that CLO stands for</p> <p>4 collateralized loaning obligations?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And does the debtor – is the</p> <p>7 debtor party to certain contracts that gives it</p> <p>8 the right and responsibility to manage certain</p> <p>9 CLO vehicles?</p> <p>10 MR. BONDS: Objection, form.</p> <p>11 MR. MORRIS: You can answer.</p> <p>12 A. Yes.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And you're aware of that because you</p> <p>15 personally signed some of those contracts and</p> <p>16 agreements, right?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. NexPoint Advisors LP, are you</p> <p>19 familiar with that firm?</p> <p>20 A. Yes.</p> <p>21 Q. That's an advisory firm; is that</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And we'll just refer to that as</p> <p>25 NexPoint; is that okay?</p>

<p>Page 18</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. You have a direct or indirect</p> <p>4 economic or ownership interest in NexPoint,</p> <p>5 correct?</p> <p>6 MR. BONDS: Objection, form.</p> <p>7 MR. MORRIS: You can answer.</p> <p>8 A. Yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You're the president of NexPoint,</p> <p>11 correct?</p> <p>12 A. I believe so.</p> <p>13 Q. And you own NexPoint's general</p> <p>14 partner; is that right?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know who owns NexPoint's</p> <p>17 general partner?</p> <p>18 A. No.</p> <p>19 Q. As the president of NexPoint, is it</p> <p>20 fair to say that you control that entity?</p> <p>21 A. Generally.</p> <p>22 Q. Highland Capital Management Fund</p> <p>23 Advisors LP, are you familiar with that firm?</p> <p>24 A. Yes.</p> <p>25 Q. And that's also an advisory firm,</p>	<p>Page 19</p> <p>1 J. DONDERO</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. And we'll refer to that firm as Fund</p> <p>5 Advisors; is that fair?</p> <p>6 A. Sure.</p> <p>7 Q. And we'll refer to Fund Advisors and</p> <p>8 NexPoint together just as "the advisors"; is that</p> <p>9 fair?</p> <p>10 A. I think you should be more specific</p> <p>11 than that, but –</p> <p>12 Q. Okay. I apologize. Are you</p> <p>13 finished?</p> <p>14 If at any time I ask a question and</p> <p>15 you don't understand, will you let me know that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. You have a direct or indirect</p> <p>18 economic or ownership interest in Fund Advisors,</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. You're the president of Fund</p> <p>22 Advisors; is that true?</p> <p>23 A. I believe so.</p> <p>24 Q. And you own Fund Advisors' general</p> <p>25 partner; is that right?</p>
<p>Page 20</p> <p>1 J. DONDERO</p> <p>2 A. I don't believe I own as much of it</p> <p>3 as I own of NexPoint, but I don't know the</p> <p>4 numbers.</p> <p>5 Q. Okay. As one of the two beneficial</p> <p>6 owners of Fund Advisors and as the president of</p> <p>7 Fund Advisors, is it fair to say that you control</p> <p>8 that entity?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And Fund Advisors and NexPoint</p> <p>11 manage certain investment funds; is that right?</p> <p>12 A. I'm sorry, I missed the point of that</p> <p>13 question.</p> <p>14 Q. Didn't hear? Okay.</p> <p>15 Fund Advisors, which we've talked</p> <p>16 about, and NexPoint, which we've talked about,</p> <p>17 those two entities manage certain investment</p> <p>18 funds; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And one of the investment funds that</p> <p>21 the advisors manage is Highland Income Fund. Do</p> <p>22 I have that right?</p> <p>23 A. Yes. I'm not sure which fund that</p> <p>24 is, but yes, that's – that's one of them.</p> <p>25 Q. Are you the portfolio manager of the</p>	<p>Page 21</p> <p>1 J. DONDERO</p> <p>2 Highland Income Fund?</p> <p>3 A. I believe so.</p> <p>4 Q. Do you hold any titles at the</p> <p>5 Highland Income Fund other than portfolio</p> <p>6 manager?</p> <p>7 MR. BONDS: To the extent you know.</p> <p>8 Don't speculate.</p> <p>9 A. I don't – I don't know. I know I'm</p> <p>10 portfolio manager on virtually all of the funds.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Is there any fund that you're not the</p> <p>13 portfolio manager for that you're aware of?</p> <p>14 A. I don't know.</p> <p>15 Q. Are you the portfolio manager of</p> <p>16 NexPoint Capital Inc.?</p> <p>17 A. If that name refers to a fund, I</p> <p>18 believe so.</p> <p>19 Q. Okay. You're not sure if that refers</p> <p>20 to a fund?</p> <p>21 A. There's a fund with the symbol NHF.</p> <p>22 If that's the name – which I don't think you</p> <p>23 have the exact name. If that's the name of it,</p> <p>24 then I believe – I believe I'm the portfolio</p> <p>25 manager. The name that you just gave sounded</p>



<p>Page 22</p> <p>1 J. DONDERO</p> <p>2 more like a holding company name or a subsidiary</p> <p>3 name for NexPoint. If it's not a fund, I'm not</p> <p>4 the portfolio manager. If it is a fund, I</p> <p>5 believe I am.</p> <p>6 Q. Okay. Do you hold – are you</p> <p>7 familiar with an entity called NexPoint</p> <p>8 Capital Inc.?</p> <p>9 A. No.</p> <p>10 Q. Okay. How about NexPoint Strategic</p> <p>11 Opportunities Fund, is that a fund that is</p> <p>12 managed by one of the advisors?</p> <p>13 A. I believe that's the name for NHF.</p> <p>14 That's what I thought you were referring to.</p> <p>15 That's the one that's a fund, and that's the one</p> <p>16 that I'm portfolio manager on.</p> <p>17 Q. Okay. Do you hold any titles at</p> <p>18 NexPoint Strategic Opportunity Fund other than</p> <p>19 portfolio manager?</p> <p>20 A. I don't know.</p> <p>21 Q. The advisors caused each of the funds</p> <p>22 to invest in certain CLOs that are managed by the</p> <p>23 debtor, right?</p> <p>24 MR. BONDS: To the extent you know.</p> <p>25 Don't speculate.</p>	<p>Page 23</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: John, if there's an</p> <p>3 objection, I welcome it. If there's a direction</p> <p>4 not to answer, I welcome it. But what I don't</p> <p>5 welcome is guiding the witness. If he doesn't</p> <p>6 remember, he's done this so many times, he knows</p> <p>7 what he's doing.</p> <p>8 You want me to ask the question</p> <p>9 again, Mr. Dondero?</p> <p>10 THE WITNESS: Please.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. The two advisors that we talked</p> <p>13 about, they manage funds, right?</p> <p>14 A. Yes.</p> <p>15 Q. And those funds have invested in</p> <p>16 certain CLOs that are managed by the debtor,</p> <p>17 correct?</p> <p>18 A. The problem I have with that question</p> <p>19 and the part that I don't want to testify as</p> <p>20 agreeing to or acknowledging is that the debtor</p> <p>21 manages those CLOs, because I won't testify to</p> <p>22 the debtor being in good standing, and I won't</p> <p>23 testify to the debtor not being in default, and I</p> <p>24 won't testify to the debtor having the capability</p> <p>25 to manage those CLOs –</p>
<p>Page 24</p> <p>1 J. DONDERO</p> <p>2 Q. Will you – I'm sorry to interrupt.</p> <p>3 Go ahead.</p> <p>4 A. No, I mean, that's – so I won't – I</p> <p>5 won't testify affirmatively to the second half of</p> <p>6 that question.</p> <p>7 Q. Okay. But you will admit, won't you,</p> <p>8 that the debtor has – is party to contracts that</p> <p>9 give it the right to manage CLOs in which the</p> <p>10 advisors caused the funds to invest, right?</p> <p>11 MR. BONDS: Objection, form.</p> <p>12 MR. MORRIS: You can answer.</p> <p>13 A. The beginning and end of what I want</p> <p>14 to testify to is that the advisor is parties –</p> <p>15 party to contracts. The contracts have –</p> <p>16 provide the ability to manage assets in the CLO</p> <p>17 subject to a bunch of different things, subject</p> <p>18 to not being in default, subject to the ability,</p> <p>19 subject to the capability and being registered</p> <p>20 advisor, et cetera, et cetera.</p> <p>21 I don't want to have any testimony</p> <p>22 that implies that the advisor is in good standing</p> <p>23 or able or capable of managing those CLOs or that</p> <p>24 Jim Seery is even an investment professional.</p> <p>25 ///</p>	<p>Page 25</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. I think I understand.</p> <p>4 When you used the word "advisor" in</p> <p>5 your last answer, you were referring to the</p> <p>6 debtor, is that right?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. It's the debtor that has – let me</p> <p>10 try again.</p> <p>11 It's the debtor that has the</p> <p>12 contracts with the CLO, right?</p> <p>13 A. Yes.</p> <p>14 Q. But it's your contention that the</p> <p>15 debtor is in default and that Mr. Seery and the</p> <p>16 debtor otherwise don't have the capability to</p> <p>17 manage the CLOs. That's what you're saying,</p> <p>18 right?</p> <p>19 A. I don't want to argue, and it's for</p> <p>20 the lawyers and the Court to decide, but I don't</p> <p>21 want to be affirmatively acknowledging that</p> <p>22 Seery's an investment professional. I don't want</p> <p>23 to be affirmatively acknowledging that he has any</p> <p>24 employees and staff when he's told them all</p> <p>25 they're being terminated in the next few weeks.</p>

<p>Page 26</p> <p>1 J. DONDERO</p> <p>2 I don't want to acknowledge that he</p> <p>3 is in compliance and can operate those contracts</p> <p>4 if I believe those contracts are in default</p> <p>5 because, A, the advisor's in bankruptcy, and B,</p> <p>6 none of the key man provisions are being adhered</p> <p>7 to by the advisor.</p> <p>8 I don't want to in any form or</p> <p>9 fashion acknowledge or represent or somehow be</p> <p>10 twisted into testifying that he is in good</p> <p>11 standing or has the ability to manage those CLOs.</p> <p>12 It may be found by somebody that he is, but I</p> <p>13 don't want to be in any way inferred to be</p> <p>14 sanctioning it.</p> <p>15 Q. Okay. Are you aware – have any of</p> <p>16 the contracts pursuant to which the CLOs and the</p> <p>17 debtor are the parties, have any of those</p> <p>18 contracts been terminated, to the best of your</p> <p>19 knowledge, since the petition date?</p> <p>20 A. I believe they're subject to stays,</p> <p>21 among other things, but I'm not – I'm not a</p> <p>22 lawyer.</p> <p>23 Q. Has anybody sought to lift the stay</p> <p>24 in order to terminate the contracts, to the best</p> <p>25 of your knowledge?</p>	<p>Page 27</p> <p>1 J. DONDERO</p> <p>2 A. I don't know where – I don't know.</p> <p>3 Q. Has any of the CLOs ever contended</p> <p>4 that the debtor was in breach in their agreement?</p> <p>5 A. I believe the beneficial holders</p> <p>6 have.</p> <p>7 Q. I understand that –</p> <p>8 A. But I don't know – I don't know if</p> <p>9 the CLOs have.</p> <p>10 Q. Okay. I'm asking you a different</p> <p>11 question, and just answer my question.</p> <p>12 To the best of your knowledge, has</p> <p>13 any CLO contended that the debtor is in breach of</p> <p>14 any of the agreements that they have between</p> <p>15 them?</p> <p>16 MR. BONDS: Objection, form.</p> <p>17 A. I don't know.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. You're not aware of any such</p> <p>20 contention, right?</p> <p>21 A. I don't know.</p> <p>22 Q. You're not aware of any contention by</p> <p>23 the CLOs that the debtor is in default under any</p> <p>24 CLO contract, correct?</p> <p>25 MR. BONDS: Objection, form.</p>
<p>Page 28</p> <p>1 J. DONDERO</p> <p>2 A. I don't know regarding the CLOs.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Did you ever ask them? Withdrawn.</p> <p>5 Did you ever ask anybody on behalf of</p> <p>6 the CLOs whether they were going to declare a</p> <p>7 default under the CLO management agreements?</p> <p>8 MR. BONDS: Objection, form.</p> <p>9 A. I don't know.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. You don't know if you asked? I'm</p> <p>12 just asking you if you ever asked the question.</p> <p>13 A. Not of the CLOs. Those questions</p> <p>14 were asked regarding the beneficial owners, and I</p> <p>15 think the beneficial owners did that, but I</p> <p>16 didn't have direct knowledge or contact with the</p> <p>17 CLOs.</p> <p>18 Q. Okay. And the beneficial owners are</p> <p>19 not parties to the CLO management agreements</p> <p>20 between the CLOs and the debtor, correct?</p> <p>21 MR. BONDS: Objection, form.</p> <p>22 A. I don't want to draw a legal</p> <p>23 conclusion of the rights of the beneficial owners</p> <p>24 and the people who have the risk and the people</p> <p>25 who have the ultimate decision authority whether</p>	<p>Page 29</p> <p>1 J. DONDERO</p> <p>2 or not they can be circumvented or ignored by an</p> <p>3 intermediate nonfinancial – nonfinancially</p> <p>4 interested party. I don't want to – I don't</p> <p>5 want to speculate on that.</p> <p>6 MR. MORRIS: Okay. I move to strike.</p> <p>7 And I'm not asking for a legal</p> <p>8 conclusion; I'm asking for your understanding.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Is it your understanding that</p> <p>11 beneficial owners are parties to the CLO</p> <p>12 management agreements between the debtor and the</p> <p>13 CLOs?</p> <p>14 MR. BONDS: Objection to form.</p> <p>15 MR. MORRIS: You can answer.</p> <p>16 A. I think that asks for a legal</p> <p>17 conclusion.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. It does not. I'm asking you as a</p> <p>20 factual matter based on your understanding as the</p> <p>21 portfolio manager of the funds and the president</p> <p>22 of the advisors who made these investments. I'm</p> <p>23 asking you –</p> <p>24 MR. BONDS: Objection, form.</p> <p>25 ///</p>

<p>Page 30</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. – in that capacity.</p> <p>4 In that capacity, do you have any</p> <p>5 understanding that the beneficial owners are</p> <p>6 parties to the CLO management agreements between</p> <p>7 the debtor and the CLOs?</p> <p>8 MR. BONDS: Objection, form.</p> <p>9 A. My understanding is that the</p> <p>10 beneficial owner should always be considered.</p> <p>11 MR. MORRIS: Okay. I move to strike.</p> <p>12 I'm not asking you whether they should be</p> <p>13 considered.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. I'm asking you very specifically</p> <p>16 whether you believe that they are parties to the</p> <p>17 contract.</p> <p>18 MR. BONDS: Objection, form, asked</p> <p>19 and answered.</p> <p>20 A. Yeah, I believe you're asking me for</p> <p>21 a legal conclusion, and I won't give one.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay.</p> <p>24 MR. MORRIS: La Asia, can we please</p> <p>25 put up Exhibit 1. Let's share the screen and put</p>	<p>Page 31</p> <p>1 J. DONDERO</p> <p>2 up Exhibit 1.</p> <p>3 (Dondero Deposition Exhibit 1</p> <p>4 marked.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Mr. Dondero, I appreciate that it's</p> <p>7 difficult to do this remotely, and as we</p> <p>8 discussed last time, the one thing that I'm</p> <p>9 certainly not doing today is playing gotcha with</p> <p>10 documents.</p> <p>11 So I'm going to put documents up on</p> <p>12 the screen from time to time, and to the extent</p> <p>13 that you think you need to read more of the</p> <p>14 document in order to have full context, will you</p> <p>15 let me know that?</p> <p>16 A. Sure.</p> <p>17 Q. Okay. This is a letter dated</p> <p>18 October 16th from NexPoint to Mr. Seery.</p> <p>19 Do you see that?</p> <p>20 A. Yep.</p> <p>21 Q. Okay. Are you familiar with this</p> <p>22 document? Have you ever seen it before?</p> <p>23 A. Generally. I'm generally familiar</p> <p>24 with it, but I haven't seen it before.</p> <p>25 Q. Okay. Do you recall when you first</p>
<p>Page 32</p> <p>1 J. DONDERO</p> <p>2 learned that this document was sent? Was it at</p> <p>3 or around the time the document was sent?</p> <p>4 A. It was at or around the time, yes.</p> <p>5 Q. Did you discuss with NexPoint any of</p> <p>6 the substance that is in this letter? And again,</p> <p>7 I'm happy to scroll through it if that would be</p> <p>8 helpful.</p> <p>9 MR. BONDS: Objection, form.</p> <p>10 A. Just generally.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you – I don't want to know about</p> <p>13 any conversations, but did you speak with anybody</p> <p>14 at K&amp;L Gates about this particular letter, just</p> <p>15 yes or no?</p> <p>16 A. My primary conversation was with</p> <p>17 internal counsel. K&amp;L Gates might have been on</p> <p>18 some phone call or two.</p> <p>19 Q. Okay. Whose idea was it to send this</p> <p>20 out?</p> <p>21 MR. BONDS: Objection, form.</p> <p>22 A. Whose idea? I – I don't think</p> <p>23 anybody viewed it as an idea as much as a</p> <p>24 regulatory necessity.</p> <p>25 ///</p>	<p>Page 33</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And did you authorize the sending of</p> <p>4 this particular letter?</p> <p>5 A. Not specifically.</p> <p>6 Q. Did you generally support the sending</p> <p>7 of the letter?</p> <p>8 A. Yes.</p> <p>9 Q. And you knew the letter was being</p> <p>10 sent; is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. And you didn't object to the sending</p> <p>13 of this letter, right?</p> <p>14 A. I did not object.</p> <p>15 Q. Okay. And since learning that the</p> <p>16 letter was sent, have you ever directed NexPoint</p> <p>17 to withdraw the letter?</p> <p>18 A. No.</p> <p>19 Q. You have the power to do that, don't</p> <p>20 you, sir?</p> <p>21 A. I – I don't believe so. When the</p> <p>22 chief compliance officer believes it's a breach</p> <p>23 of regulatory compliance, the chief compliance</p> <p>24 officer in financial institutions has personal</p> <p>25 liability, and I don't believe that other C-suite</p>

<p>Page 34</p> <p>1 J. DONDERO</p> <p>2 executives can overrule the chief compliance</p> <p>3 officer.</p> <p>4 Q. Who is the chief compliance officer?</p> <p>5 A. Jason Post.</p> <p>6 Q. Did Mr. Post ever say that he would</p> <p>7 not withdraw the letter because of regulatory</p> <p>8 compliance?</p> <p>9 MR. BONDS: Objection, form.</p> <p>10 A. I – not that I know of.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever discuss with Mr. Post</p> <p>13 whether or not this letter should be withdrawn?</p> <p>14 A. Again, I didn't believe I had the</p> <p>15 authority to.</p> <p>16 Q. Okay. And he never told you that he</p> <p>17 couldn't; that's just the implicit conclusion</p> <p>18 that you drew because he was the chief compliance</p> <p>19 officer; is that fair?</p> <p>20 A. Implicit conclusion? It's more the</p> <p>21 understanding I have of compliance from having</p> <p>22 lived it the last 20 years.</p> <p>23 MR. MORRIS: Okay. Let's put up</p> <p>24 Exhibit 2, please.</p> <p>25 (Dondero Deposition Exhibit 2</p>	<p>Page 35</p> <p>1 J. DONDERO</p> <p>2 marked.)</p> <p>3 MS. CANTY: Do you see it, John?</p> <p>4 MR. MORRIS: I think we still have</p> <p>5 Exhibit 1.</p> <p>6 MS. CANTY: Okay. Give me a second.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. This is another letter that</p> <p>9 was sent by NexPoint to Mr. Seery, this one dated</p> <p>10 November 24, 2020.</p> <p>11 Do you see that, sir?</p> <p>12 A. Yes.</p> <p>13 Q. And you saw this letter at or around</p> <p>14 the time it was sent, right?</p> <p>15 A. I didn't see the letter specifically,</p> <p>16 but I'm aware of it.</p> <p>17 Q. And you knew it was going to be sent;</p> <p>18 is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. And did you authorize this letter to</p> <p>21 be sent on behalf of the advisors and the funds</p> <p>22 that are listed there?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 A. Let me give the consistent testimony</p> <p>25 I gave last time. It wasn't an authorization. I</p>
<p>Page 36</p> <p>1 J. DONDERO</p> <p>2 was aware of it. It was, I believe, a continued</p> <p>3 regulatory breach from the standpoint of the --</p> <p>4 of compliance that drove the letter.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. When there's a regulatory breach, is</p> <p>7 there an obligation to alert anybody other than</p> <p>8 the portfolio manager?</p> <p>9 A. I know that's being investigated. I</p> <p>10 don't know the answer regarding a breach like</p> <p>11 this.</p> <p>12 Q. Are you aware of any notification</p> <p>13 that NexPoint made to anybody in the world, other</p> <p>14 than Mr. Seery, with respect to the matters set</p> <p>15 forth in Exhibit 1 and Exhibit 2?</p> <p>16 MR. BONDS: Objection, form.</p> <p>17 A. I don't know, and I'm not in a</p> <p>18 position to comment at this point.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. I'm just asking you if you know</p> <p>21 whether – I'm asking for your knowledge.</p> <p>22 Do you know whether NexPoint ever</p> <p>23 advised anybody, other than Mr. Seery, of the</p> <p>24 allegations that are set forth in Exhibit 1 and</p> <p>25 Exhibit 2?</p>	<p>Page 37</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I don't know, nor would I necessarily</p> <p>4 be informed if compliance self-reports this to</p> <p>5 the SEC or other regulatory bodies. But I do not</p> <p>6 know.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. And nobody told you that, right?</p> <p>9 A. I don't know.</p> <p>10 Q. Is there – did you see any written</p> <p>11 analysis or memorandum that was prepared by</p> <p>12 your – by the chief compliance officer with</p> <p>13 respect to the matters set forth in Exhibit 1 and</p> <p>14 Exhibit 2?</p> <p>15 A. I know there was a multipage analysis</p> <p>16 that was done, but I've never seen it.</p> <p>17 Q. And was it written by the chief</p> <p>18 compliance officer or was it written by legal</p> <p>19 staff?</p> <p>20 A. I was told he did it in conjunction</p> <p>21 with external counsel.</p> <p>22 Q. But you've never seen it?</p> <p>23 A. I've never seen it.</p> <p>24 Q. Did you support the sending of this</p> <p>25 letter?</p>

<p>Page 38</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. Since learning that this letter was</p> <p>4 sent, have you directed NexPoint to withdraw this</p> <p>5 letter?</p> <p>6 A. No, I have not.</p> <p>7 Q. Okay. Around Thanksgiving you</p> <p>8 learned that Mr. Seery was seeking to sell</p> <p>9 certain securities that were owned by certain</p> <p>10 CLOs managed by the debtor, right?</p> <p>11 A. I believe I was informed after the</p> <p>12 fact.</p> <p>13 Q. You were informed that certain sales</p> <p>14 of securities owned by the CLOs were being sold</p> <p>15 at Mr. Seery's direction, right?</p> <p>16 A. Yes.</p> <p>17 MR. BONDS: Objection, form.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. And at around that time, once</p> <p>20 you learned that, you personally intervened to</p> <p>21 stop those trades, right?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we put up Exhibit 3,</p> <p>25 please.</p>	<p>Page 39</p> <p>1 J. DONDERO</p> <p>2 (Dondero Deposition Exhibit 3</p> <p>3 marked.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. This is an e-mail string. We're</p> <p>6 going to start at the bottom and work up, just so</p> <p>7 we can get it in order. And you'll see the</p> <p>8 bottom begins with an e-mail from Hunter Covitz.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Who is Mr. Covitz?</p> <p>12 A. Covitz, Hunter Covitz manages our CLO</p> <p>13 asset – or our CLO assets, primarily.</p> <p>14 Q. Is he a High- – is he a debtor</p> <p>15 employee or is he employed by any other entity?</p> <p>16 A. I believe he's a debtor employee.</p> <p>17 Q. Okay. Do you see there's a reference</p> <p>18 there to gatekeeper@hcmpl.com?</p> <p>19 A. Yes.</p> <p>20 Q. Are you – withdrawn.</p> <p>21 Is that – withdrawn.</p> <p>22 Is it your understanding that that's</p> <p>23 kind of a basket of different e-mail addresses</p> <p>24 that are held together by the Gatekeeper address?</p> <p>25 A. I wouldn't describe it that way, but</p>
<p>Page 40</p> <p>1 J. DONDERO</p> <p>2 it is a bucket of e-mails.</p> <p>3 Q. Okay. And is your e-mail address or</p> <p>4 was your e-mail address included within</p> <p>5 Gatekeeper?</p> <p>6 A. Historically, it was.</p> <p>7 Q. And do you know when that stopped</p> <p>8 being the case?</p> <p>9 A. I do not know.</p> <p>10 Q. Was it after the time that you</p> <p>11 resigned from your position at the debtor?</p> <p>12 A. I do not know.</p> <p>13 Q. Okay. Matt Pearson is below</p> <p>14 Gatekeeper. Do you know who Mr. Pearson is?</p> <p>15 A. He is a – generally an equity trader</p> <p>16 that works for Joe Sowin.</p> <p>17 Q. And are Mr. Pearson and Mr. Sowin</p> <p>18 employees of the debtor?</p> <p>19 A. I don't believe so. I don't believe</p> <p>20 Joe is. I don't know if Matt is. I don't know.</p> <p>21 Q. Okay. But is it fair to say that</p> <p>22 pursuant to this e-mail, Mr. Covitz is giving</p> <p>23 direction to sell certain securities held by the</p> <p>24 CLOs?</p> <p>25 A. Yes.</p>	<p>Page 41</p> <p>1 J. DONDERO</p> <p>2 Q. Can we scroll to the e-mail above</p> <p>3 that, please. And then Mr. Pearson acknowledged</p> <p>4 that e-mail a little bit later in the day, right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And if we can –</p> <p>7 (Interruption by the videographer.)</p> <p>8 MR. MORRIS: It's okay. Let's</p> <p>9 proceed and we'll do the best we can.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Mr. Covitz's e-mail was the – do you</p> <p>12 see the subject matter is Sky Equity?</p> <p>13 A. Yes.</p> <p>14 Q. And do you have an understanding of</p> <p>15 what Sky Equity refers to?</p> <p>16 A. It's a – it's a post-restructured</p> <p>17 equity that the funds have held for years.</p> <p>18 Q. Okay. So if we could scroll up to</p> <p>19 your e-mail that's right there, did you receive a</p> <p>20 copy of Mr. Covitz's original e-mail?</p> <p>21 A. It appears so.</p> <p>22 Q. Okay. And did you give the</p> <p>23 instruction to the recipients of Mr. Hunter</p> <p>24 Covitz's e-mail not to sell the Sky Equity as had</p> <p>25 been instructed by Mr. Seery?</p>



<p>Page 42</p> <p>1 J. DONDERO</p> <p>2 A. Yes.</p> <p>3 Q. And you understood at the time that</p> <p>4 you gave the instruction to the people on this</p> <p>5 e-mail that they were trying to execute trades</p> <p>6 that Mr. Seery had authorized, right?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 THE WITNESS: Can you repeat the</p> <p>9 question, please.</p> <p>10 MR. MORRIS: Sure.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. At the time that you gave the</p> <p>13 instruction, no, do not, you knew that you were</p> <p>14 stopping trades that had been authorized and</p> <p>15 directed by Mr. Seery, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did you speak with Mr. Seery before</p> <p>18 instructing the recipients of your e-mail not to</p> <p>19 execute the SKY transactions?</p> <p>20 A. No, I did not.</p> <p>21 Q. Did you take any steps to seek the</p> <p>22 debtor's consent before instructing the</p> <p>23 recipients of this e-mail not to execute the SKY</p> <p>24 transactions?</p> <p>25 A. I'm sorry, please repeat that again.</p>	<p>Page 43</p> <p>1 J. DONDERO</p> <p>2 The – I missed the first part of the sentence.</p> <p>3 Q. No problem.</p> <p>4 Did you take any steps to seek the</p> <p>5 debtor's consent before instructing the</p> <p>6 recipients of your e-mail –</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. – to stop the SKY transactions, to</p> <p>10 stop executing the SKY transactions?</p> <p>11 A. No.</p> <p>12 Q. Thank you.</p> <p>13 Can we scroll up to the response.</p> <p>14 Okay. Stop there.</p> <p>15 Mr. Pearson responded later that</p> <p>16 afternoon. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And in response, he canceled all of</p> <p>19 the SKY and AVYA sales that the debtor had</p> <p>20 directed but which had not yet been executed,</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. And if we can scroll up to the e-mail</p> <p>24 above that, you responded to that as well, didn't</p> <p>25 you?</p>
<p>Page 44</p> <p>1 J. DONDERO</p> <p>2 A. Yep.</p> <p>3 Q. Can you please read your response out</p> <p>4 loud.</p> <p>5 A. HFAM and DAF – or HFAM and DAF has</p> <p>6 instructed Highland in writing not to sell any</p> <p>7 CLO underlying assets. There is potential</p> <p>8 liability. Don't do it again, please.</p> <p>9 Q. All right. The written instructions,</p> <p>10 is that a reference to the first two exhibits</p> <p>11 that we looked at? And if you want to go back</p> <p>12 and check them out, we can, but I'm trying to –</p> <p>13 I want to know what writings you're referring to.</p> <p>14 Withdrawn.</p> <p>15 Are the writings that you're</p> <p>16 referring to the two exhibits that we just looked</p> <p>17 at, Exhibit 1 and Exhibit 2?</p> <p>18 MR. BONDS: Objection, form.</p> <p>19 A. Generally, yes.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Are you –</p> <p>22 A. I don't know if – I don't know if</p> <p>23 there were more than those two, but generally,</p> <p>24 letters of those substances – well, generally,</p> <p>25 letters of those substance – of that substance</p>	<p>Page 45</p> <p>1 J. DONDERO</p> <p>2 is what I'm referring to.</p> <p>3 Q. I appreciate that, Mr. Dondero.</p> <p>4 Do you recall any other writings that</p> <p>5 you were referring to at the time you sent this</p> <p>6 e-mail?</p> <p>7 A. I'm just saying I don't know if there</p> <p>8 were others or if there were other e-mails. I</p> <p>9 don't know. But there were – they would have</p> <p>10 been similar in terms of substance as those two.</p> <p>11 Q. Okay. Do you see the reference there</p> <p>12 in the latter portion of your e-mail, quote,</p> <p>13 there is potential liability, don't do it again?</p> <p>14 A. Yes.</p> <p>15 Q. Who was the intended recipient of</p> <p>16 that message?</p> <p>17 A. At this juncture, it's to Matt</p> <p>18 Pearson, I believe.</p> <p>19 Q. And why would Matt Pearson have</p> <p>20 personal liability – withdrawn.</p> <p>21 Why did you decide to tell</p> <p>22 Mr. Pearson that he had potential liability for</p> <p>23 executing the transactions that Mr. Seery had</p> <p>24 directed?</p> <p>25 MR. BONDS: Objection, form.</p>

<p>Page 46</p> <p>1 J. DONDERO</p> <p>2 A. Yeah, to be clear, it doesn't say</p> <p>3 personal liability. I said potential liability.</p> <p>4 I believe this is – I believe what was done here</p> <p>5 is bona fide typical class action activity that</p> <p>6 we've suffered from historically, when the</p> <p>7 interests of beneficial holders are ignored when</p> <p>8 assets are sold for no business purpose. No</p> <p>9 business purpose. No definable, discernible,</p> <p>10 articulated business purpose.</p> <p>11 There's – I think there's potential</p> <p>12 liability for the manager, the fund complex, you</p> <p>13 know, and sometimes for the individuals involved.</p> <p>14 But my potential liability was a general</p> <p>15 statement.</p> <p>16 THE WITNESS: You know what, guys,</p> <p>17 listen. I've got a couple of calls I've got to</p> <p>18 make that I'm ten minutes late for, so we're</p> <p>19 going to need to take a break for a few minutes</p> <p>20 here, ideally now, or after the next question,</p> <p>21 please.</p> <p>22 MR. MORRIS: I'm happy to take a</p> <p>23 break now. How long are you thinking, though?</p> <p>24 THE WITNESS: Ten or 15 minutes.</p> <p>25 MR. MORRIS: Yeah, that's perfectly</p>	<p>Page 47</p> <p>1 J. DONDERO</p> <p>2 fine, Mr. Dondero. Can you just state on the</p> <p>3 record that you will not talk to any Highland</p> <p>4 employee, including Mr. Ellington or</p> <p>5 Mr. Leventon, you will not communicate with them</p> <p>6 or their counsel in any way with respect to this</p> <p>7 deposition?</p> <p>8 THE WITNESS: Yeah, I promise. I</p> <p>9 haven't – yeah. I will not talk to them. The</p> <p>10 only Highland employee I might talk to is Jerome,</p> <p>11 who's handling the systems for this call, and</p> <p>12 that's it.</p> <p>13 MR. MORRIS: I'm fine with that, but</p> <p>14 really, I'm requesting not only Highland</p> <p>15 employees but not to talk to anybody about the</p> <p>16 testimony today. I'm going to accommodate you</p> <p>17 and –</p> <p>18 THE WITNESS: I won't. Nobody cares</p> <p>19 about this deposition. I won't talk to anybody.</p> <p>20 MR. MORRIS: Okay.</p> <p>21 THE WITNESS: I'll be back in ten or</p> <p>22 15 minutes, okay?</p> <p>23 MR. MORRIS: Okay.</p> <p>24 THE VIDEOGRAPHER: 10:41 a.m. Central</p> <p>25 Standard Time, we're off the record.</p>
<p>Page 48</p> <p>1 J. DONDERO</p> <p>2 (Recess taken, 10:41 a.m. to</p> <p>3 11:16 a.m. CST)</p> <p>4 THE VIDEOGRAPHER: 11:16 a.m., we're</p> <p>5 back on the record.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Mr. Dondero, can you hear me?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Are you aware that the</p> <p>10 deposition taking place today is pursuant to</p> <p>11 Court order?</p> <p>12 A. Yes.</p> <p>13 Q. Did you schedule meetings and</p> <p>14 telephone calls during the day today,</p> <p>15 notwithstanding the Court's order?</p> <p>16 A. I didn't formally schedule anything.</p> <p>17 Q. Okay. So you have nothing scheduled</p> <p>18 for the rest of the day; is that right? You're</p> <p>19 here to answer questions?</p> <p>20 A. Correct.</p> <p>21 MR. MORRIS: Okay. Can we get the</p> <p>22 last exhibit back up on the screen, please.</p> <p>23 Okay. Can we scroll –</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. We were last looking at your e-mail.</p>	<p>Page 49</p> <p>1 J. DONDERO</p> <p>2 Can we see the response above that, please?</p> <p>3 Okay. And that's Mr. Sowin responding.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. And Mr. Sowin was following your</p> <p>7 instructions; is that right?</p> <p>8 A. His response is what it is. I'm</p> <p>9 not – what do you mean by following my</p> <p>10 instructions?</p> <p>11 Q. Well, he issued an order – it says,</p> <p>12 quote: Please block all orders from hitting the</p> <p>13 trading desk for the – I assume he meant</p> <p>14 funds – Jim mentioned.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 MR. BONDS: Objection, form.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. And that's exactly what you wanted to</p> <p>20 happen, right?</p> <p>21 A. I'm sorry, could you unhighlight</p> <p>22 that? It's hard for me to read with the</p> <p>23 highlight. Okay. Thank you.</p> <p>24 Yeah, they – I think he tried to</p> <p>25 figure out a way to prevent it from inadvertently</p>

<p>Page 50</p> <p>1 J. DONDERO</p> <p>2 happening.</p> <p>3 Q. Okay. And Mr. Sowin's – the</p> <p>4 substance of Mr. Sowin's e-mail is consistent</p> <p>5 with your intent to prevent any further trades</p> <p>6 from the CLOs, right?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 A. My intent was to prevent trades that</p> <p>9 weren't in the best interests of investors, that</p> <p>10 investors – the beneficial holders had</p> <p>11 articulated they didn't want sold while these</p> <p>12 funds were in transition, and that the – there</p> <p>13 was no business purpose or benefit to the debtor</p> <p>14 to sell these assets.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. That –</p> <p>17 A. So that's – that was the rationale I</p> <p>18 was trying to capture.</p> <p>19 THE WITNESS: Hold on for me one</p> <p>20 second. Jerome just stepped in. What does the</p> <p>21 systems guy want Jerome to do?</p> <p>22 MR. MORRIS: Figure out a way to turn</p> <p>23 the lights on.</p> <p>24 (Technical comments off the</p> <p>25 stenographic record.)</p>	<p>Page 51</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: Let's go forward.</p> <p>3 THE WITNESS: So we're okay with</p> <p>4 Jerome? That's it for now?</p> <p>5 MR. MORRIS: Yeah.</p> <p>6 THE WITNESS: All right. Thank you.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. You didn't correct anything that</p> <p>9 Mr. Sowin did – said in this e-mail, did you?</p> <p>10 A. No.</p> <p>11 Q. You didn't tell –</p> <p>12 MR. BONDS: Can you repeat the</p> <p>13 question? I didn't understand it.</p> <p>14 MR. MORRIS: That's okay.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Mr. Dondero, you didn't correct</p> <p>17 anything that Mr. Sowin wrote in this e-mail, did</p> <p>18 you?</p> <p>19 A. No.</p> <p>20 Q. You didn't tell Mr. Sowin that he</p> <p>21 misunderstood your intent, did you?</p> <p>22 A. I don't believe so.</p> <p>23 Q. And you didn't give any explanation</p> <p>24 to him as to why you did not want to sell any CLO</p> <p>25 underlying assets except for what you wrote in</p>
<p>Page 52</p> <p>1 J. DONDERO</p> <p>2 that e-mail below, right?</p> <p>3 MR. BONDS: Objection, form.</p> <p>4 A. I – I believe I – well, the e-mails</p> <p>5 stand on their own. I think the reasons below</p> <p>6 are sufficient. I think I had a conversation</p> <p>7 with Joe besides that, and there was an</p> <p>8 unawareness on the trading desk and with Hunter</p> <p>9 that the interest of investors had been expressed</p> <p>10 and ignored by Seery, you know, so – they</p> <p>11 weren't aware of that. They thought that was</p> <p>12 unusual and inappropriate.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. In your role as portfolio manager, is</p> <p>15 it – do you believe it's your responsibility to</p> <p>16 always defer to the desires of your investors?</p> <p>17 Do you cede – do you cede – withdrawn.</p> <p>18 Do you cede responsibility and your</p> <p>19 business judgment for making transactions to your</p> <p>20 investors?</p> <p>21 MR. BONDS: Objection, form.</p> <p>22 A. In this case, it would be</p> <p>23 appropriate. In general, it would depend.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Okay. A few days later, you learned</p>	<p>Page 53</p> <p>1 J. DONDERO</p> <p>2 that Mr. Seery was trying a work-around to</p> <p>3 effectuate the trades anyway, right?</p> <p>4 A. Yes.</p> <p>5 Q. And you wrote to Thomas Surgent to</p> <p>6 let him know that you were aware that Seery was</p> <p>7 trying a work-around to effectuate the trades,</p> <p>8 right?</p> <p>9 A. I believe there was such an e-mail.</p> <p>10 Q. Okay. Can you just scroll up and see</p> <p>11 that e-mail, please. All right. Stop right</p> <p>12 there.</p> <p>13 Who is Mr. Surgent?</p> <p>14 A. He's the chief compliance officer of</p> <p>15 Highland Capital.</p> <p>16 Q. The debtor?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And how long has he held that</p> <p>19 position to the best of your recollection?</p> <p>20 A. A long time. More than five years.</p> <p>21 Q. What does it mean to – when you</p> <p>22 wrote that Mr. Seery was, quote, working on a</p> <p>23 work-around to trade these securities? What does</p> <p>24 that mean?</p> <p>25 A. As a noninvestment professional and</p>



<p>Page 54</p> <p>1 J. DONDERO</p> <p>2 as a nontrader and as a nonportfolio manager, he</p> <p>3 set up an account for himself, I believe,</p> <p>4 directly with Jefferies to trade the securities</p> <p>5 in the CLOs.</p> <p>6 Q. How did you learn that?</p> <p>7 A. I think we still get trade reports</p> <p>8 from Jefferies, or Jefferies – the Jefferies</p> <p>9 trades get reported back into the system and have</p> <p>10 to be input by Joe, and so Joe sees the trades</p> <p>11 come back from Jefferies at the end of the day.</p> <p>12 Q. And Joe is Joe Sowin?</p> <p>13 A. Yes.</p> <p>14 Q. And he works for you; is that right?</p> <p>15 MR. BONDS: Objection, form.</p> <p>16 MR. MORRIS: Withdrawn.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. He works for one of the advisors; is</p> <p>19 that right?</p> <p>20 A. I believe he works for HFAM, but I'm</p> <p>21 not a hundred percent certain.</p> <p>22 Q. And the work-around was – is that</p> <p>23 another way of saying that Mr. Seery tried to do</p> <p>24 the trades that he thought were appropriate</p> <p>25 without your interference?</p>	<p>Page 55</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I'm not going to agree with that</p> <p>4 speculation. If you want me to speculate, I</p> <p>5 think Seery had no business purpose and he was</p> <p>6 doing it to tweak myself and everybody else.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Did he tell you that?</p> <p>9 A. No. I'm speculating.</p> <p>10 Q. Okay. Do you have any idea why he</p> <p>11 made the trades?</p> <p>12 A. He – he had no –</p> <p>13 Q. Withdrawn. I'm sorry.</p> <p>14 Do you have any idea why he wanted to</p> <p>15 make the trades?</p> <p>16 A. I didn't speak to him directly.</p> <p>17 Q. Okay.</p> <p>18 A. Indirectly – I didn't speak to him.</p> <p>19 I didn't speak to him directly. It was –</p> <p>20 Q. Do you have any personal knowledge as</p> <p>21 you sit here right now as to why Mr. Seery wanted</p> <p>22 to effectuate the trades that you were blocking?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 A. I've thought about it at length. I</p> <p>25 can't come up with a business purpose that would</p>
<p>Page 56</p> <p>1 J. DONDERO</p> <p>2 supersede an account that's in transition and the</p> <p>3 beneficial owners have made it clear that the</p> <p>4 manager's not in compliance, they're moving the</p> <p>5 accounts, and knowing the individual assets that</p> <p>6 were sold, I can't – I couldn't think of a</p> <p>7 business purpose that Seery would be operating</p> <p>8 under.</p> <p>9 MR. MORRIS: Okay. I move to strike.</p> <p>10 I'm not asking you for what you think. I'm</p> <p>11 asking you for facts.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Do you have any knowledge of any</p> <p>14 facts as to the business justification or</p> <p>15 rationale for why Mr. Seery wanted to make these</p> <p>16 trades?</p> <p>17 MR. BONDS: Objection, form.</p> <p>18 A. No, I don't believe there are any.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And you never asked him; is that</p> <p>21 right?</p> <p>22 A. Correct.</p> <p>23 Q. And you never instructed anybody on</p> <p>24 your behalf or on behalf of the advisors or on</p> <p>25 behalf of the funds to ask Mr. Seery why he</p>	<p>Page 57</p> <p>1 J. DONDERO</p> <p>2 wanted to make these trades, right?</p> <p>3 A. That's not correct.</p> <p>4 Q. Nobody ever told you that they'd had</p> <p>5 a conversation with Mr. Seery in which</p> <p>6 Mr. Seery – (audio malfunction) –</p> <p>7 (Clarification requested by the</p> <p>8 stenographer.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Did anybody ever tell you that they</p> <p>11 had spoken with Mr. Seery and Mr. Seery had</p> <p>12 provided an explanation, a business rationale for</p> <p>13 the transactions that he wanted to effectuate?</p> <p>14 MR. BONDS: Objection, form.</p> <p>15 A. Yes. Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Who was that?</p> <p>18 A. Joe Sowin.</p> <p>19 Q. When did he tell you about this</p> <p>20 conversation?</p> <p>21 A. It was at or about this time in...</p> <p>22 Q. And what did Mr. Sowin tell you?</p> <p>23 A. Seery told him it was for risk</p> <p>24 minimization or risk reduction.</p> <p>25 Q. Did he tell him anything else?</p>

<p>Page 58</p> <p>1 J. DONDERO</p> <p>2 A. No. He said risk reduction was why</p> <p>3 he was selling the securities.</p> <p>4 Q. That's the only rationale that</p> <p>5 Mr. Seery gave to Mr. Sowin; is that your</p> <p>6 testimony?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Did Mr. Sowin tell you that he</p> <p>9 asked any questions of Mr. Seery?</p> <p>10 A. He asked him why he was selling them.</p> <p>11 Q. And you've given me the entirety of</p> <p>12 the answer as conveyed by Mr. Sowin to you; is</p> <p>13 that right?</p> <p>14 A. Yes.</p> <p>15 Q. Is Mr. Sowin's conversation with</p> <p>16 Mr. Seery about the justification for these</p> <p>17 trades reflected in any document or any e-mail</p> <p>18 anywhere that you can recall?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did K&amp;L Gates explain their</p> <p>21 understanding of the business rationale of these</p> <p>22 trades in any of the letters that they sent on</p> <p>23 behalf of the funds or any of the advisors?</p> <p>24 A. Not that I'm aware of. I'm not</p> <p>25 aware.</p>	<p>Page 59</p> <p>1 J. DONDERO</p> <p>2 Q. Do you know Dustin Norris?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know that he testified in</p> <p>5 December in connection with this bankruptcy</p> <p>6 matter?</p> <p>7 A. Yes.</p> <p>8 Q. Did you ever tell Dustin Norris about</p> <p>9 the conversation Mr. Sowin had with Mr. Seery</p> <p>10 that you've described here?</p> <p>11 A. I believe he was aware of it.</p> <p>12 Q. Do you know – did you talk to him in</p> <p>13 advance of his testimony?</p> <p>14 A. I talk to Dustin most every day.</p> <p>15 Q. And did you tell Dustin that he</p> <p>16 should make sure to alert the Court about this</p> <p>17 conversation with Mr. Sowin and Mr. Seery?</p> <p>18 A. No.</p> <p>19 Q. Did you think it was important that</p> <p>20 the Court know Mr. Seery's business rationale?</p> <p>21 A. I thought it was a nonsensical answer</p> <p>22 on Seery's part. I didn't have an opinion on</p> <p>23 whether or not the Court should know.</p> <p>24 Q. Now, you – at the time, you were</p> <p>25 speaking to Mr. Seery directly; isn't that right?</p>
<p>Page 60</p> <p>1 J. DONDERO</p> <p>2 A. Rarely. I didn't – since the</p> <p>3 injunction or since – rarely. I can't remember</p> <p>4 the last time I've spoken to him. Scott</p> <p>5 Ellington has been the appropriate go-between as</p> <p>6 far as I understand it.</p> <p>7 Q. Okay. Was there anything that</p> <p>8 prevented you in November 2020 from picking up</p> <p>9 the phone to talk to Mr. Seery about his desire</p> <p>10 to effectuate these transactions?</p> <p>11 A. No. The last time I – yeah, I'm</p> <p>12 remembering, the last time I talked to Seery was</p> <p>13 the day after Thanksgiving.</p> <p>14 Q. Okay. Is there anything that you're</p> <p>15 aware of that prevented you from picking up the</p> <p>16 phone and asking Mr. Seery for his business</p> <p>17 justification for these trades prior to</p> <p>18 December 10, 2020?</p> <p>19 MR. BONDS: Objection, form.</p> <p>20 A. No. I expressed my disapproval via</p> <p>21 e-mail.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay. Why did you decide to write to</p> <p>24 Mr. Surgent on November 27th?</p> <p>25 A. I wasn't sure he was aware of Seery's</p>	<p>Page 61</p> <p>1 J. DONDERO</p> <p>2 work-around, and I know Thomas has an acute</p> <p>3 awareness of his personal liability for</p> <p>4 regulatory breaches or doing things that aren't</p> <p>5 in the best interests of investors, and I don't</p> <p>6 believe he has the extra insurance and</p> <p>7 indemnities that Seery has.</p> <p>8 Q. If he was acutely aware of it, why</p> <p>9 did you feel the need to remind him of that in</p> <p>10 your e-mail to him?</p> <p>11 A. Because I don't think he was aware</p> <p>12 that Seery was doing a work-around on behalf of</p> <p>13 the debtor that he was compliance officer of. I</p> <p>14 wasn't convinced he was aware, so I included him</p> <p>15 on the e-mail.</p> <p>16 Q. Did you intend to suggest that by</p> <p>17 following Mr. Seery's orders to execute the</p> <p>18 trades, that Mr. Surgent faced personal</p> <p>19 liability?</p> <p>20 A. That's the way it works.</p> <p>21 Q. Okay. And you wanted him to know</p> <p>22 that, right?</p> <p>23 A. I wanted him to know that Seery was</p> <p>24 doing inappropriate trades and doing</p> <p>25 inappropriate work-around, in my opinion. I</p>

<p>Page 62</p> <p>1 J. DONDERO</p> <p>2 didn't think Thomas was aware. I thought Seery</p> <p>3 was operating independently.</p> <p>4 Thomas might have been aware, but I</p> <p>5 didn't think so. I don't talk to – I haven't</p> <p>6 talked to Thomas in I don't know when, so I</p> <p>7 thought it was important for him to know.</p> <p>8 Q. Okay. You have communicated with</p> <p>9 Mr. Seery from time to time via text message,</p> <p>10 right?</p> <p>11 A. Yes.</p> <p>12 MR. MORRIS: Can we put up Exhibit 4,</p> <p>13 please.</p> <p>14 (Dondero Deposition Exhibit 4</p> <p>15 marked.)</p> <p>16 MR. MORRIS: And if we can scroll</p> <p>17 down a little bit. Okay.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. This is a text that you sent at the</p> <p>20 bottom there at 5:26 p.m. to Mr. Seery; is that</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Can you just read that text, that</p> <p>24 5:26 out loud?</p> <p>25 A. Be careful what you do, last warning.</p>	<p>Page 63</p> <p>1 J. DONDERO</p> <p>2 Q. Why did you write that?</p> <p>3 A. Because all the reasons we just went</p> <p>4 over. And I think he's violating the Advisers</p> <p>5 Act. He's putting the funds and the debtor at</p> <p>6 risk, in jeopardy of class action lawsuits, and</p> <p>7 he's going against the interests of investors</p> <p>8 that are in transition, and expressed a desire to</p> <p>9 not have their assets sold, especially when</p> <p>10 there's no business reason.</p> <p>11 And for all the reasons articulated</p> <p>12 below – I mean, for all the reasons we just went</p> <p>13 over, and there are a few others I probably</p> <p>14 haven't remembered off the top of my head, but</p> <p>15 it's – I think it's – I think his activities</p> <p>16 regarding the CLOs is incredibly inappropriate,</p> <p>17 unfounded and malicious, and he hadn't sold that</p> <p>18 many securities at that point in time, somewhat</p> <p>19 de minimis amounts, but it was a warning to tell</p> <p>20 him to stop; otherwise, rightfully, the</p> <p>21 beneficial owners would take more significant</p> <p>22 actions, which I think they should and they will.</p> <p>23 Q. What significant action are the</p> <p>24 beneficial owners going to take?</p> <p>25 A. I don't know. But there's a lot more</p>
<p>Page 64</p> <p>1 J. DONDERO</p> <p>2 things that they can push on, like you were</p> <p>3 suggesting earlier, asking earlier in terms of</p> <p>4 self-reporting to the SEC.</p> <p>5 Q. But you haven't done that yet, to the</p> <p>6 best of your knowledge; is that right?</p> <p>7 A. I'm not aware.</p> <p>8 Q. You wrote there that it's the last</p> <p>9 warning.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. How many other warnings have you</p> <p>13 given Mr. Seery?</p> <p>14 A. All the e-mails we just went over.</p> <p>15 Q. Anything else?</p> <p>16 A. No.</p> <p>17 Q. Okay. You got document requests in</p> <p>18 this – in connection with this matter; isn't</p> <p>19 that right?</p> <p>20 A. Yes.</p> <p>21 MR. MORRIS: Okay. Can we put up</p> <p>22 Exhibit 5, please.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. You know, before we look at that,</p> <p>25 earlier this morning you mentioned – you made a</p>	<p>Page 65</p> <p>1 J. DONDERO</p> <p>2 reference to internal counsel.</p> <p>3 Do you recall that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Who were you referring to?</p> <p>6 A. D.C. Sauter.</p> <p>7 Q. And D.C. Sauter is internal counsel</p> <p>8 for who?</p> <p>9 A. I'm sorry, was there a question</p> <p>10 there?</p> <p>11 Q. Yes. I apologize.</p> <p>12 D.C. Sauter is internal counsel for</p> <p>13 who, for which entity?</p> <p>14 A. NexPoint.</p> <p>15 Q. Okay. Were you referring to anybody</p> <p>16 else?</p> <p>17 A. No.</p> <p>18 Q. Okay. You mentioned Scott Ellington</p> <p>19 earlier, right?</p> <p>20 A. Yes.</p> <p>21 Q. And who is Mr. Ellington?</p> <p>22 A. He's general counsel at Highland</p> <p>23 historically. I think his role has been</p> <p>24 redefined as settlement counsel, that's how it</p> <p>25 was described to me, I guess, six, nine months</p>

<p>Page 66</p> <p>1 J. DONDERO</p> <p>2 ago, six months ago.</p> <p>3 Q. Mr. Ellington is employed by the</p> <p>4 debtor, right?</p> <p>5 A. Yes.</p> <p>6 Q. And do you know when he first became</p> <p>7 employed by the debtor?</p> <p>8 A. Over a decade ago.</p> <p>9 Q. Do you know whether Mr. Ellington has</p> <p>10 any employer other than the debtor?</p> <p>11 A. I don't know.</p> <p>12 Q. He never told you that he had an</p> <p>13 employer other than the debtor, did he?</p> <p>14 A. I don't know.</p> <p>15 Q. You know if he told you or not,</p> <p>16 right? Did he ever tell you that?</p> <p>17 A. He never told me he did, no.</p> <p>18 Q. And you have no facts or reason to</p> <p>19 believe, as you sit here right now, that the</p> <p>20 debtor is – withdrawn.</p> <p>21 You have no facts or reason to</p> <p>22 believe right now that Mr. Ellington has any</p> <p>23 employer other than the debtor, correct?</p> <p>24 MR. BONDS: Objection, form.</p> <p>25 A. I'd like to stick with: I don't</p>	<p>Page 67</p> <p>1 J. DONDERO</p> <p>2 know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. You have no reason to believe that;</p> <p>5 is that fair?</p> <p>6 A. Correct, I don't know.</p> <p>7 Q. Okay. He's not – Mr. Ellington is</p> <p>8 not your personal lawyer, right?</p> <p>9 A. No.</p> <p>10 Q. He's never represented Jim Dondero</p> <p>11 personally; is that right?</p> <p>12 A. No.</p> <p>13 MR. MORRIS: Let's look at the</p> <p>14 document request, please, Exhibit 5.</p> <p>15 (Dondero Deposition Exhibit 5</p> <p>16 marked.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. If we could go – let me just ask you</p> <p>19 generally, Mr. Dondero.</p> <p>20 Have you ever seen this document</p> <p>21 before?</p> <p>22 A. No.</p> <p>23 Q. Are you aware that the debtor served</p> <p>24 document requests on the Bonds Ellis firm for</p> <p>25 documents in connection with its motion for a</p>
<p>Page 68</p> <p>1 J. DONDERO</p> <p>2 preliminary injunction?</p> <p>3 A. Yes.</p> <p>4 Q. How did you learn that?</p> <p>5 A. I heard about it from my lawyers.</p> <p>6 Q. Okay. Did you oversee the search for</p> <p>7 responsive documents?</p> <p>8 A. Response – I know we were responsive</p> <p>9 and compliant, but I delegated it to my</p> <p>10 assistants and the employees at Bonds Ellis.</p> <p>11 Q. Which assistants did you delegate</p> <p>12 this to?</p> <p>13 A. Tara Loiben. I think primarily Tara</p> <p>14 Loiben.</p> <p>15 Q. And who is Ms. Loiben?</p> <p>16 A. She's my assistant.</p> <p>17 Q. And who is she –</p> <p>18 A. I'm sorry?</p> <p>19 Q. Who is she employed by?</p> <p>20 A. I – I don't know for sure. I think</p> <p>21 Highland, but I don't know. I don't want to</p> <p>22 speculate.</p> <p>23 Q. What instructions – (audio</p> <p>24 malfunction) –</p> <p>25 (Clarification requested by the</p>	<p>Page 69</p> <p>1 J. DONDERO</p> <p>2 stenographer.)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. What instructions did you give her in</p> <p>5 order to search for documents?</p> <p>6 A. I didn't – I didn't give her any.</p> <p>7 She worked with that and she had – she has full</p> <p>8 access to my e-mail, and I gave her my phone for</p> <p>9 the better part of a couple days in the office.</p> <p>10 Q. You – until the end of 2020, you had</p> <p>11 an e-mail address with an HCMLP or a Highland</p> <p>12 e-mail address, right?</p> <p>13 A. Yes.</p> <p>14 Q. Have you stopped – has that e-mail</p> <p>15 address ceased to be in use?</p> <p>16 A. I've switched to an e-mail at the</p> <p>17 bank as of – whatever it was, last week or...</p> <p>18 Q. In the year 2020, did you use any</p> <p>19 e-mail address other than the Highland e-mail</p> <p>20 address?</p> <p>21 A. No.</p> <p>22 Q. You don't have a Gmail address or any</p> <p>23 other personal e-mail address?</p> <p>24 A. I have an old Gmail address, but it's</p> <p>25 dormant. I haven't logged on to it in years.</p>

<p>Page 70</p> <p>1 J. DONDERO</p> <p>2 Q. Okay. And you understood that the</p> <p>3 debtor's document request called for the</p> <p>4 production of all text messages that were</p> <p>5 responsive to the requests, right?</p> <p>6 A. Yes.</p> <p>7 Q. Can we just scroll down to the</p> <p>8 requests themselves? Right there.</p> <p>9 Do you see Request No. 3 is for all</p> <p>10 communications between you and any person</p> <p>11 employed by the debtor?</p> <p>12 A. Yes.</p> <p>13 Q. And did you understand that the</p> <p>14 request was limited to the time period of, I</p> <p>15 think, December 10th, 2020 to the end of the</p> <p>16 month?</p> <p>17 A. I didn't read the details of this. I</p> <p>18 didn't get into it. I didn't do the document</p> <p>19 production that I believe was completed and</p> <p>20 responsive. I delegated that.</p> <p>21 Q. Did you review the documents before</p> <p>22 they were produced? Do you know what was</p> <p>23 produced? Withdrawn. Two different questions.</p> <p>24 Did you review the documents for</p> <p>25 completeness before your lawyers delivered them</p>	<p>Page 71</p> <p>1 J. DONDERO</p> <p>2 to my firm?</p> <p>3 A. Only in the most general – when</p> <p>4 she'd print out a stack of them, I'd just thumb</p> <p>5 through the stack of them, and that was it. But</p> <p>6 other than that, no.</p> <p>7 Q. Did you do anything to satisfy</p> <p>8 yourself that you had produced all responsive</p> <p>9 documents?</p> <p>10 A. I trust Tara's work ethic and</p> <p>11 capabilities, and I trust the lawyers at Bonds</p> <p>12 Ellis, so I didn't – I didn't intervene or</p> <p>13 supersede or supervise.</p> <p>14 Q. So you didn't do anything to make</p> <p>15 sure – you didn't do anything personally –</p> <p>16 withdrawn.</p> <p>17 You didn't take any steps personally</p> <p>18 to make sure that all responsive documents had</p> <p>19 been produced, right?</p> <p>20 MR. BONDS: Objection, form.</p> <p>21 A. I wasn't involved personally, but I</p> <p>22 do believe it was responsive and complete.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Until early December, you had a phone</p> <p>25 that was bought and paid for by the debtor,</p>
<p>Page 72</p> <p>1 J. DONDERO</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. What happened to that phone?</p> <p>5 A. It was disposed of as part of getting</p> <p>6 a replacement phone in anticipation of</p> <p>7 potentially a transition.</p> <p>8 Q. Who decided to dispose of it?</p> <p>9 A. That's historically what we've done</p> <p>10 with all of our historic phones, when we've</p> <p>11 gotten new phones. I've gotten a new phone, I</p> <p>12 guess, every four or five years, and the old ones</p> <p>13 have always been destroyed.</p> <p>14 Q. Who decided to destroy this –</p> <p>15 withdrawn.</p> <p>16 When you say it was disposed of, what</p> <p>17 does that mean?</p> <p>18 A. As far as I know, it was disposed of</p> <p>19 in the garbage, but I don't know if it was</p> <p>20 recycled or whatever.</p> <p>21 Q. And who decided to throw it in the</p> <p>22 garbage?</p> <p>23 A. We've always – we've always done</p> <p>24 that when we've gotten new phones, versus trading</p> <p>25 them in, for the senior executives.</p>	<p>Page 73</p> <p>1 J. DONDERO</p> <p>2 Q. I appreciate that, but I'm just</p> <p>3 talking about the very specific phone that the</p> <p>4 debtor bought and paid for for your benefit. Who</p> <p>5 made the decision to dispose and throw that phone</p> <p>6 away?</p> <p>7 MR. BONDS: Objection, form.</p> <p>8 A. I – like I said, I understood it to</p> <p>9 be our standard process and protocol. I don't</p> <p>10 know. I can't label anybody with the decision.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Well, who threw it away?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know if you threw the phone</p> <p>15 away?</p> <p>16 A. No, I – I don't know. No, I don't</p> <p>17 remember throwing it away, but I don't know who</p> <p>18 did.</p> <p>19 Q. Did you have conversations with</p> <p>20 anybody about the decision to throw away the</p> <p>21 phone?</p> <p>22 A. Like I said, it wasn't a decision or</p> <p>23 a new decision. It's been the process, as far as</p> <p>24 I understand it, every time we've upgraded phones</p> <p>25 over the last 30 years.</p>



<p>Page 74</p> <p>1 J. DONDERO</p> <p>2 Q. You just throw it in the garbage?</p> <p>3 You don't try to get a credit for it by returning</p> <p>4 it?</p> <p>5 A. No.</p> <p>6 Q. Okay. Did you ever speak with</p> <p>7 Mr. Ellington about your phone that was bought</p> <p>8 and paid for by the debtor?</p> <p>9 A. I think Ellington's phone and my</p> <p>10 phone and I think – I think right around the</p> <p>11 same time, in anticipation, in case there was a</p> <p>12 transition or in case there was a liquidation</p> <p>13 plan, it was time to move the phone ownership</p> <p>14 away from the estate. The estate wasn't going to</p> <p>15 pay for it anymore anyway in another couple of</p> <p>16 weeks so, I –</p> <p>17 Q. Were you aware –</p> <p>18 A. I'm sorry, what's your question?</p> <p>19 Q. Are you aware that the UCC had asked</p> <p>20 for your text messages before the time that you</p> <p>21 disposed of your phone?</p> <p>22 A. No.</p> <p>23 Q. Nobody ever told you that the UCC</p> <p>24 wanted your phone?</p> <p>25 A. No.</p>	<p>Page 75</p> <p>1 J. DONDERO</p> <p>2 Q. When exactly did you dispose of your</p> <p>3 phone?</p> <p>4 A. On or about when I got my new phone.</p> <p>5 Q. Who at the debtor did you tell that</p> <p>6 you disposed of your phone?</p> <p>7 A. I don't – I don't remember who. Was</p> <p>8 it Jason Rothstein was involved in getting my new</p> <p>9 phone and knew that I was disposing of my old</p> <p>10 phone? I don't know who else knew. But again,</p> <p>11 it was standard procedure.</p> <p>12 Q. Did it ever occur to you to get the</p> <p>13 debtor's consent before doing this?</p> <p>14 MR. BONDS: Objection, form.</p> <p>15 A. No.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you have the phone number</p> <p>18 transferred to your personal account?</p> <p>19 A. Yes.</p> <p>20 Q. Did you ever ask the debtor for its</p> <p>21 permission to do that?</p> <p>22 A. No.</p> <p>23 Q. Did you ever give the debtor notice</p> <p>24 that you were doing that?</p> <p>25 A. I didn't believe it was necessary or</p>
<p>Page 76</p> <p>1 J. DONDERO</p> <p>2 appropriate.</p> <p>3 Q. So you wanted it to be a secret?</p> <p>4 MR. BONDS: Objection, form.</p> <p>5 A. No. No, I wouldn't describe it as a</p> <p>6 secret. I would say I didn't think it was</p> <p>7 necessary or appropriate.</p> <p>8 Every executive that's ever left</p> <p>9 Highland has always kept their phone number,</p> <p>10 period. Highland's never said, no, we're keeping</p> <p>11 the phone number, ever, out of the two or 300</p> <p>12 people that have come through Highland. And I</p> <p>13 don't believe most businesses try and retain the</p> <p>14 phone number of employees when they leave. It's</p> <p>15 ludicrous on its surface.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So let me just make sure that</p> <p>18 I understand this.</p> <p>19 You threw the phone – withdrawn.</p> <p>20 Somebody threw the phone that the</p> <p>21 debtor bought and paid for in the garbage without</p> <p>22 the debtor's knowledge or consent; is that right?</p> <p>23 MR. BONDS: Objection, form.</p> <p>24 A. I'd just repeat my testimony, that</p> <p>25 it's always been our process to destroy old</p>	<p>Page 77</p> <p>1 J. DONDERO</p> <p>2 phones when we get new phones.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. You were no longer an employee of the</p> <p>5 debtor at the time, correct?</p> <p>6 A. At the time? I believe I was an</p> <p>7 employee of the debtor since January.</p> <p>8 Q. Well, you stayed on as an unpaid</p> <p>9 employee until mid October; isn't that right?</p> <p>10 A. Right, but I – but I don't even</p> <p>11 think my phone was paid for by the debtor. I</p> <p>12 think my phone was paid for by shared services by</p> <p>13 NexPoint. I – I don't know what you're – I</p> <p>14 don't know what you're getting at or what</p> <p>15 you're – you're asking me.</p> <p>16 Q. It's not complicated.</p> <p>17 Did you tell the debtor that you</p> <p>18 threw away your phone at any time until this</p> <p>19 deposition?</p> <p>20 A. Did I tell the debtor? Like I said,</p> <p>21 I didn't think it was the debtor's phone. No, I</p> <p>22 did not tell the debtor or get permission. No, I</p> <p>23 did not.</p> <p>24 Q. And did you tell the debtor that you</p> <p>25 were changing the phone number?</p>

<p>Page 78</p> <p>1 J. DONDERO</p> <p>2 A. No.</p> <p>3 Q. And did Mr. Ellington help you change</p> <p>4 the phone number?</p> <p>5 MR. BONDS: Objection, form.</p> <p>6 A. I didn't change the phone number.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Withdrawn.</p> <p>9 Did Mr. Ellington help you have the</p> <p>10 phone number transitioned to your personal</p> <p>11 account?</p> <p>12 MR. BONDS: Objection, form.</p> <p>13 A. No. No. It was Jason – Jason</p> <p>14 Rothstein handles the technology stuff and the</p> <p>15 phone stuff.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did Mr. Ellington also change his</p> <p>18 phone number to his own personal account?</p> <p>19 A. My understanding was there was</p> <p>20 numerous senior executives that changed their</p> <p>21 phone in anticipation of being terminated by the</p> <p>22 debtor shortly.</p> <p>23 Q. Who else did it?</p> <p>24 A. I don't know. I thought it was – I</p> <p>25 didn't think it was just Ellington and I. I</p>	<p>Page 79</p> <p>1 J. DONDERO</p> <p>2 thought it was a bunch of senior execs. But –</p> <p>3 Q. What's the basis –</p> <p>4 A. – who cares? Who cares? I didn't</p> <p>5 care. I don't know. I mean –</p> <p>6 Q. I don't care if you care or not. I'm</p> <p>7 asking you questions.</p> <p>8 What is the basis for your statement</p> <p>9 that other people besides you and Mr. Ellington</p> <p>10 changed the phone numbers?</p> <p>11 MR. BONDS: Objection, form.</p> <p>12 A. That was my understanding. That was</p> <p>13 my understanding. But I don't – I don't recall</p> <p>14 specifics. I didn't pay attention.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. What is the basis for the</p> <p>17 understanding? Did somebody tell you that?</p> <p>18 MR. BONDS: Can you repeat the</p> <p>19 question?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. What is the basis for your</p> <p>22 understanding? Did somebody tell you that</p> <p>23 employees of Highland other than Mr. Ellington</p> <p>24 had changed the phone numbers?</p> <p>25 A. Yes. My understanding was everybody</p>
<p>Page 80</p> <p>1 J. DONDERO</p> <p>2 had to move their phones in the next 30 days or</p> <p>3 next 25 days, based on Seery's termination</p> <p>4 notice.</p> <p>5 Q. Did Jim Seery – withdrawn. I'm</p> <p>6 perfectly fine.</p> <p>7 MR. MORRIS: Can we put up Exhibit 6,</p> <p>8 please.</p> <p>9 (Dondero Deposition Exhibit 6</p> <p>10 marked.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. That's Jason Rothstein.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. He didn't throw the phone in the</p> <p>16 garbage, did he?</p> <p>17 A. I don't know.</p> <p>18 Q. Well, according to the text that he</p> <p>19 sent you on December 10th, he left your own –</p> <p>20 old phone in the drawer of Tara's desk.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. So he didn't think that it was his</p> <p>24 responsibility as of December 10th to throw it in</p> <p>25 the garbage, did he?</p>	<p>Page 81</p> <p>1 J. DONDERO</p> <p>2 A. I don't know.</p> <p>3 Q. He left it in Tara's desk, didn't he?</p> <p>4 A. On December 10th. But I don't know</p> <p>5 what he did on December 11th.</p> <p>6 Q. Did you tell him to do anything?</p> <p>7 A. I don't – all I know is the phone's</p> <p>8 been disposed of. That's all I know.</p> <p>9 Q. Okay. Did you tell Mr. Rothstein to</p> <p>10 take the phone out of Tara's desk and throw it in</p> <p>11 the garbage?</p> <p>12 A. I did not.</p> <p>13 Q. Did you tell Tara to take the phone</p> <p>14 out of her desk and throw it in the garbage?</p> <p>15 A. I did not.</p> <p>16 MR. MORRIS: Okay. Can we put up</p> <p>17 Exhibit 7, please.</p> <p>18 (Dondero Deposition Exhibit 7</p> <p>19 marked.)</p> <p>20 MR. MORRIS: Can we just scroll down</p> <p>21 a little bit.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Is this a text message from you to</p> <p>24 Tara?</p> <p>25 A. Yep.</p>

<p>Page 82</p> <p>1 J. DONDERO</p> <p>2 Q. If we could scroll up just a little</p> <p>3 bit so we can see the date.</p> <p>4 Well, it doesn't have a date, but do</p> <p>5 you recall when you asked Tara to come in to</p> <p>6 work – (audio malfunction) –</p> <p>7 (Clarification requested by the</p> <p>8 stenographer.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. – to come in to work on discovery.</p> <p>11 Do you recall when you sent this text message,</p> <p>12 Mr. Dondero?</p> <p>13 A. No.</p> <p>14 Q. Do you know how Tara – withdrawn.</p> <p>15 Did Tara come in to work on discovery</p> <p>16 at any time?</p> <p>17 A. Yes.</p> <p>18 Q. And did you give her any instructions</p> <p>19 on what to do?</p> <p>20 A. Again, just generally.</p> <p>21 Q. What were the general instructions</p> <p>22 that you gave her?</p> <p>23 A. Work with the Bonds Ellis guys.</p> <p>24 Here's the access to my computer and my phone.</p> <p>25 Be complete and be responsive.</p>	<p>Page 83</p> <p>1 J. DONDERO</p> <p>2 Q. Did you ever speak with Mr. Ellington</p> <p>3 about your document production?</p> <p>4 A. No.</p> <p>5 Q. Did Mr. Ellington play any role in</p> <p>6 searching for, reviewing or producing responsive</p> <p>7 documents?</p> <p>8 A. Nope.</p> <p>9 Q. Did you ever speak with Mr. Leventon</p> <p>10 about your document production?</p> <p>11 A. Nope.</p> <p>12 Q. Did Mr. Leventon play any role in</p> <p>13 searching for, reviewing or producing responsive</p> <p>14 documents?</p> <p>15 A. Nope.</p> <p>16 Q. Did you ever speak with anybody</p> <p>17 employed by the debtor, other than Tara, about</p> <p>18 your document production?</p> <p>19 A. Tara's got an assistant, or my other</p> <p>20 assistant that works with Tara, Kelly, would have</p> <p>21 been the only other person.</p> <p>22 She might have been – Tara had to go</p> <p>23 back and see her girls during lunch, so I think</p> <p>24 she used Kelly to do some of the legwork.</p> <p>25 Q. Let's talk about the TRO for a</p>
<p>Page 84</p> <p>1 J. DONDERO</p> <p>2 second.</p> <p>3 MR. MORRIS: Can we put up Exhibit 9,</p> <p>4 please.</p> <p>5 (Dondero Deposition Exhibit 9</p> <p>6 marked.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. This is the temporary restraining</p> <p>9 order that was signed on December 10th.</p> <p>10 Do you see that?</p> <p>11 If we could scroll down just a little</p> <p>12 bit. Yeah.</p> <p>13 A. Okay.</p> <p>14 Q. You've never seen this document</p> <p>15 before, right?</p> <p>16 A. Yes, I haven't read it.</p> <p>17 Q. And I know I asked you earlier today</p> <p>18 what your understanding was of how this order</p> <p>19 restrained you.</p> <p>20 Do you remember those questions?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Is there anything, upon</p> <p>23 reflection, that you need to add in order to make</p> <p>24 the record complete as to your understanding of</p> <p>25 the scope of the injunction?</p>	<p>Page 85</p> <p>1 J. DONDERO</p> <p>2 A. Not at this moment.</p> <p>3 MR. MORRIS: Can you put up</p> <p>4 Exhibit 10, please.</p> <p>5 (Dondero Deposition Exhibit 10</p> <p>6 marked.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. All right. Have you seen this letter</p> <p>9 before, sir?</p> <p>10 A. No. I mean, not specifically. I</p> <p>11 probably received it, but I haven't read it.</p> <p>12 Q. All right. I just want to go back to</p> <p>13 the phone for a second to see if I can nail this</p> <p>14 down.</p> <p>15 Did you dispose of the phone</p> <p>16 somewhere around December 10th, 2020?</p> <p>17 A. I – I don't know. Probably.</p> <p>18 Q. Well, we just looked at that e-mail,</p> <p>19 right, that was from Mr. Rothstein.</p> <p>20 MR. MORRIS: Can we get that back?</p> <p>21 A. Yes.</p> <p>22 MR. MORRIS: I just want to see what</p> <p>23 the date of that was. Yes. Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. So that's December 10th at 6:25 p.m.,</p>



<p>Page 86</p> <p>1 J. DONDERO</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. So according to Mr. Rothstein,</p> <p>5 as of that date at that time, your phone was in</p> <p>6 Tara's desk, right?</p> <p>7 A. Yes.</p> <p>8 Q. You have no reason to disbelieve</p> <p>9 that, do you?</p> <p>10 MR. BONDS: Can you repeat the</p> <p>11 question? I'm sorry.</p> <p>12 MR. MORRIS: Withdrawn.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. So is it fair to say, then, that the</p> <p>15 phone was disposed of and thrown in the garbage</p> <p>16 sometime after December 10th?</p> <p>17 A. I don't know.</p> <p>18 Q. Well, as of December 10th,</p> <p>19 Mr. Rothstein told you that it was in Tara's</p> <p>20 desk, right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So if he -- Jason's not a</p> <p>23 liar, is he?</p> <p>24 A. No.</p> <p>25 Q. Do you have any reason to believe</p>	<p>Page 87</p> <p>1 J. DONDERO</p> <p>2 that the phone was anywhere other than Tara's</p> <p>3 desk at 6:25 p.m. on December 10th?</p> <p>4 A. I don't know.</p> <p>5 Q. You have no reason to believe that</p> <p>6 that statement by Mr. Rothstein is untrue,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Do you know how it came to be that</p> <p>10 the phone was disposed of in the manner that</p> <p>11 you've described?</p> <p>12 A. Nope.</p> <p>13 Q. You can't tell me who did it, is that</p> <p>14 right?</p> <p>15 A. Correct.</p> <p>16 Q. And you can't tell me when, after</p> <p>17 December 10th, that happened, right?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Thank you. Let's go back to,</p> <p>20 I guess, Exhibit 10. If we can just scroll down</p> <p>21 a little bit.</p> <p>22 I understand that you haven't seen</p> <p>23 this document before. Go to the next page,</p> <p>24 please -- no. Yeah, next page.</p> <p>25 Do you see the first full paragraph</p>
<p>Page 88</p> <p>1 J. DONDERO</p> <p>2 there beginning "On December 22nd"?</p> <p>3 A. I'm going to have to get up and read</p> <p>4 that. Just hold on a sec.</p> <p>5 Q. Okay. Take your time.</p> <p>6 A. Yes, I see that.</p> <p>7 Q. Okay. Having read that paragraph, do</p> <p>8 you have any basis to dispute any of the</p> <p>9 statements in that paragraph?</p> <p>10 MR. BONDS: I'm sorry. Can you read</p> <p>11 it again or can you ask your question again?</p> <p>12 MR. MORRIS: Sure. I'd like to know</p> <p>13 if Mr. Dondero has any basis to dispute any</p> <p>14 assertion made in that paragraph.</p> <p>15 A. I disagree with every sentence in</p> <p>16 that paragraph based on my 30 years of experience</p> <p>17 and understanding how to operate a registered</p> <p>18 investment advisor and how to do it in the</p> <p>19 interest of performance, investors and a</p> <p>20 registered investment advisor.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. All right. Let's try this</p> <p>23 differently. I shouldn't have done that.</p> <p>24 The first sentence, do you have any</p> <p>25 basis to disagree with any aspect of the first</p>	<p>Page 89</p> <p>1 J. DONDERO</p> <p>2 sentence of that paragraph? And let me just read</p> <p>3 it aloud, if I may.</p> <p>4 A. That -- all right. What's your</p> <p>5 question?</p> <p>6 Q. Is there anything inaccurate about</p> <p>7 the first sentence?</p> <p>8 A. I believe my instructions in the</p> <p>9 e-mails we went over were to not do the trades.</p> <p>10 You know, that sentence implies not settle the</p> <p>11 trade, which means to not do the trades once they</p> <p>12 were already bona fide. I -- I don't recall that</p> <p>13 ever being my contention.</p> <p>14 I would have preferred they be</p> <p>15 reversed, but my instructions, I believe, in</p> <p>16 everything we went over were to not do the</p> <p>17 trades, stop doing trades that are adverse to the</p> <p>18 interests of investors, but it wasn't regarding</p> <p>19 settling outstanding trades. So I think that</p> <p>20 sentence on its face is in error.</p> <p>21 Q. Okay. So but it's true, then, that</p> <p>22 you instructed employees of NPA and HCMFA on or</p> <p>23 around December 22nd to stop doing the trades of</p> <p>24 Avaya and Sky, correct?</p> <p>25 A. Yes.</p>

<p>Page 90</p> <p>1 J. DONDERO</p> <p>2 Q. Near the closing bell on – we're</p> <p>3 going to go back in time just a couple of days –</p> <p>4 on Friday the 18th, Mr. Sowin informed you that</p> <p>5 Seery wanted to sell these securities, right?</p> <p>6 A. I don't recall that specifically.</p> <p>7 MR. MORRIS: Okay. Can we put up</p> <p>8 Exhibit 11, please.</p> <p>9 (Dondero Deposition Exhibit 11</p> <p>10 marked.)</p> <p>11 MR. MORRIS: Okay. And if we can</p> <p>12 just go down to the bottom of it. Yeah.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. So that e-mail at the bottom, that's</p> <p>15 Mr. Seery's direction to sell Avaya securities</p> <p>16 from the CLOs, right?</p> <p>17 A. I don't know what's happening here.</p> <p>18 I don't know if this is fuzzy or my eyes are</p> <p>19 getting worse, but can we enlarge these a little</p> <p>20 bit, or I'm going to have to get up each time.</p> <p>21 Yeah. This is nutty and vindictive.</p> <p>22 I think everybody realizes that there's no</p> <p>23 liquidity in the markets the three days before</p> <p>24 Thanksgiving and Christmas. There's no urgency</p> <p>25 or reason to sell any of these securities that</p>	<p>Page 91</p> <p>1 J. DONDERO</p> <p>2 couldn't have waited until January or February.</p> <p>3 There's no business purpose in</p> <p>4 selling any of those securities, yet he's pushing</p> <p>5 them through for self-serving or vindictive</p> <p>6 reasons. I – or maybe trying to get more issues</p> <p>7 in front of the judge. I have no idea, but</p> <p>8 this – this stuff makes absolutely no sense and</p> <p>9 no business purpose.</p> <p>10 But I'm sorry, what's your question?</p> <p>11 MR. MORRIS: Okay. I move to strike</p> <p>12 and I'd ask you to listen to my question.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. It's simply that you learned, just</p> <p>15 before the closing bell on Friday, December 18th,</p> <p>16 that Mr. Seery wanted to sell Avaya securities</p> <p>17 out of the CLOs?</p> <p>18 MR. BONDS: Objection, form.</p> <p>19 THE WITNESS: Yeah, hold on. I need</p> <p>20 to interrupt for a second. When you strike</p> <p>21 something, does that mean it doesn't end up in</p> <p>22 the record?</p> <p>23 MR. MORRIS: The judge will decide</p> <p>24 whether or not it does. It's my request that the</p> <p>25 judge strike it from the record. She'll make the</p>
<p>Page 92</p> <p>1 J. DONDERO</p> <p>2 ruling.</p> <p>3 THE WITNESS: Okay. But then my</p> <p>4 lawyer can ask to put it in as my understanding</p> <p>5 of something at the end or something of the</p> <p>6 deposition or...</p> <p>7 MR. MORRIS: I don't want to give you</p> <p>8 legal advice, Mr. Dondero, but yes, that's</p> <p>9 generally how it works.</p> <p>10 THE WITNESS: Okay. Thank you.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. So again, the question is simply</p> <p>13 whether you learned near the closing bell on</p> <p>14 Friday, December 18th, that Mr. Seery wanted to</p> <p>15 sell Avaya shares out of the CLOs?</p> <p>16 MR. BONDS: Objection, form.</p> <p>17 A. It appears so.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. And can you just scroll up</p> <p>20 above that, please. And – okay.</p> <p>21 Do you see that Mr. Sowin, in fact,</p> <p>22 forwards this right to you?</p> <p>23 A. Yes.</p> <p>24 Q. And it was on the basis of this that</p> <p>25 you instructed the NPA and HCMFA employees not to</p>	<p>Page 93</p> <p>1 J. DONDERO</p> <p>2 execute these sales?</p> <p>3 A. Yes.</p> <p>4 Q. After the TRO was issued, did you</p> <p>5 ever instruct any employees of NPA or HCMFA not</p> <p>6 to interfere or impede with the debtor's</p> <p>7 management of the CLOs?</p> <p>8 A. No.</p> <p>9 Q. To the best of your knowledge, did</p> <p>10 anyone ever instruct the employees of NPA and</p> <p>11 HCMFA not to interfere or impede with the</p> <p>12 debtor's management of the CLOs?</p> <p>13 A. No.</p> <p>14 Q. Did you ever provide a copy of the</p> <p>15 TRO to any employees of NPA and HCMFA?</p> <p>16 A. I did not.</p> <p>17 Q. Do you know if anybody ever provided</p> <p>18 a copy of the TRO to any of the employees of NPA</p> <p>19 and HCMFA?</p> <p>20 A. I do not know.</p> <p>21 MR. MORRIS: Okay. Can we put up</p> <p>22 Exhibit 12, please.</p> <p>23 (Dondero Deposition Exhibit 12</p> <p>24 marked.)</p> <p>25 ///</p>

<p>Page 94</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. This is a letter that was sent</p> <p>4 to K&amp;L Gates.</p> <p>5 Do you know who K&amp;L Gates represents</p> <p>6 in connection with this matter?</p> <p>7 A. Some of the retail funds.</p> <p>8 Q. And do they also represent the two</p> <p>9 advisors?</p> <p>10 A. Yes. I believe they're one of –</p> <p>11 yes.</p> <p>12 Q. Attached to this letter, there's an</p> <p>13 Exhibit A, if we can go down, and we'll find a</p> <p>14 letter from K&amp;L Gates there. Okay.</p> <p>15 This is another letter from K&amp;L Gates</p> <p>16 dated December 22nd, 2020. Are you able to see</p> <p>17 that, sir? Can we scroll down a little bit?</p> <p>18 A. Yes. Yes, I can see the letter.</p> <p>19 Q. Okay. Were you aware that this</p> <p>20 letter was sent at the time that it was?</p> <p>21 A. I was aware, yes.</p> <p>22 Q. And these are the same entities,</p> <p>23 except for CLO Holdco, that had filed the prior</p> <p>24 motion that was denied by the Court, right?</p> <p>25 A. I'm sorry, ask that question again.</p>	<p>Page 95</p> <p>1 J. DONDERO</p> <p>2 These were –</p> <p>3 Q. Yeah, let me just do a little</p> <p>4 background.</p> <p>5 A couple of – about a week before</p> <p>6 this letter was sent, the entities represented by</p> <p>7 K&amp;L Gates, except for CLO Holdco, had made a</p> <p>8 motion in the bankruptcy court, right?</p> <p>9 A. Yes.</p> <p>10 Q. They had asked the Court to pause, to</p> <p>11 impose a pause on the debtor from selling any CLO</p> <p>12 assets; is that right?</p> <p>13 A. I don't – I don't know what</p> <p>14 exactly – I don't know the details of what they</p> <p>15 requested.</p> <p>16 Q. Okay. Did you authorize the filing</p> <p>17 of that motion?</p> <p>18 A. Authorize the filing? I</p> <p>19 championed – I pushed and encouraged the chief</p> <p>20 compliance officer and the general counsel to do</p> <p>21 what they believed was right as rigorously as</p> <p>22 possible, and it manifested itself in the letters</p> <p>23 that you're speaking of.</p> <p>24 Q. And you – and you approved of these</p> <p>25 letters, right?</p>
<p>Page 96</p> <p>1 J. DONDERO</p> <p>2 A. I – not directly and not</p> <p>3 specifically, but I encouraged them to do what</p> <p>4 they thought was right.</p> <p>5 Q. Okay. And you were aware that</p> <p>6 letters with the substance contained in them were</p> <p>7 going to be sent – (audio malfunction) –</p> <p>8 (Clarification requested by the</p> <p>9 stenographer.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. – to the debtor?</p> <p>12 THE STENOGRAPHER: And the answer</p> <p>13 again, please?</p> <p>14 MR. BONDS: And I objected as to</p> <p>15 form.</p> <p>16 THE STENOGRAPHER: And the answer</p> <p>17 again, please?</p> <p>18 A. I was aware that letters were being</p> <p>19 sent, and I was aware that motions – or a motion</p> <p>20 was being filed.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. This letter was also sent on behalf</p> <p>23 of CLO Holdco, Ltd.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p>Page 97</p> <p>1 J. DONDERO</p> <p>2 Q. Are you the direct or indirect</p> <p>3 economic or beneficial owner of CLO Holdco, Ltd.?</p> <p>4 A. No.</p> <p>5 Q. Who is?</p> <p>6 A. I believe the DAF and HarbourVest.</p> <p>7 Q. And who controls the DAF?</p> <p>8 A. Grant Scott.</p> <p>9 Q. Who is the beneficial owner of the</p> <p>10 DAF?</p> <p>11 A. Three char- – three or four</p> <p>12 charitable organizations.</p> <p>13 Q. And who controls CLO Holdco?</p> <p>14 A. I don't know exactly.</p> <p>15 Q. Do you?</p> <p>16 A. No.</p> <p>17 Q. And who are the possibilities?</p> <p>18 A. CLO Holdco, my understanding is it</p> <p>19 was a – it was an investment amalgamation</p> <p>20 between HarbourVest and the DAF, so with the DAF</p> <p>21 having the primary – or the largest ownership</p> <p>22 interest.</p> <p>23 Q. And with that largest ownership</p> <p>24 interest, is the DAF able to control CLO Holdco?</p> <p>25 A. I don't know. Maybe.</p>

<p>Page 98</p> <p>1 J. DONDERO</p> <p>2 Q. You've never asked that question?</p> <p>3 A. Nope.</p> <p>4 Q. Did you ever instruct any of the</p> <p>5 advisors or funds to withdraw this letter?</p> <p>6 MR. BONDS: Objection, form.</p> <p>7 A. No.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. To the best of your knowledge, has</p> <p>10 anyone on behalf of the advisors, the funds or</p> <p>11 CLO Holdco ever instructed K&amp;L Gates to withdraw</p> <p>12 this letter?</p> <p>13 A. Not that I'm aware of.</p> <p>14 Q. Okay. I want to just see if I can</p> <p>15 refresh your recollection a bit.</p> <p>16 When you talked about the DAF and</p> <p>17 HarbourVest, is it possible that you're confusing</p> <p>18 that with HCLOF?</p> <p>19 A. You know, you're right. It could be.</p> <p>20 Maybe it is CLO Holdco – you know what, let me</p> <p>21 just – let me not speculate. But the CLO Holdco</p> <p>22 might just be the DAF, and the combined entity</p> <p>23 might be the level above that. I – I don't know</p> <p>24 exactly. Let me leave it at that.</p> <p>25 Q. Okay. That's fair.</p>	<p>Page 99</p> <p>1 J. DONDERO</p> <p>2 This is the – I think you've</p> <p>3 testified – I'm trying to speed this up a little</p> <p>4 bit, believe it or not – that you supported the</p> <p>5 sending of this particular letter, right? And if</p> <p>6 you need to read more of it, let me know.</p> <p>7 A. No, I – again, the thrust of it, the</p> <p>8 theme of it, the – when you think bad or illegal</p> <p>9 or regulatorily inappropriate stuff has happened,</p> <p>10 what did you do, when you knew it, et cetera.</p> <p>11 And I think the responsibilities of that</p> <p>12 transcend a lot of things, you know.</p> <p>13 Q. But you are aware that these very</p> <p>14 same entities, except for CLO Holdco, had</p> <p>15 advanced the very same arguments to the</p> <p>16 bankruptcy court just six days earlier and their</p> <p>17 motion is denied, right?</p> <p>18 MR. BONDS: Objection, form.</p> <p>19 A. Yes. And with all due respect to the</p> <p>20 Court, it doesn't mean that it was wrong or</p> <p>21 inappropriate to advance the argument.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay. But having advanced the</p> <p>24 argument on December 16th and having had it</p> <p>25 rejected, you support these entities pressing the</p>
<p>Page 100</p> <p>1 J. DONDERO</p> <p>2 same arguments again against the debtor, right?</p> <p>3 A. We try and do what's right.</p> <p>4 MR. MORRIS: Okay. Can we put up</p> <p>5 Exhibit 13, please.</p> <p>6 (Dondero Deposition Exhibit 13</p> <p>7 marked.)</p> <p>8 MR. MORRIS: And if we can go to</p> <p>9 Exhibit A on the back. Thanks.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. This is another letter sent the next</p> <p>12 day, right, on December 23rd, from K&amp;L Gates?</p> <p>13 And we can scroll down further, again.</p> <p>14 Do you recall that there was yet</p> <p>15 another letter sent on the 23rd?</p> <p>16 A. Yeah, I don't recall specifically,</p> <p>17 but...</p> <p>18 Q. Can we scroll down a little bit</p> <p>19 further in this document.</p> <p>20 Do you recall that there came a time</p> <p>21 when K&amp;L Gates, on behalf of the advisors and the</p> <p>22 funds, told the debtor and its counsel that it</p> <p>23 was considering initiating the process for</p> <p>24 removing the debtor as portfolio manager of the</p> <p>25 CLOs?</p>	<p>Page 101</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I believe they – I don't know if</p> <p>4 you're asking me a reservation of rights or</p> <p>5 whatever, but I think they should do everything</p> <p>6 as rigorously as possible to try and protect the</p> <p>7 investors.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Are you aware of any prohibition of</p> <p>10 doing what you're – withdrawn.</p> <p>11 Are you aware that the debtor made an</p> <p>12 offer to assign the CLO management agreements to</p> <p>13 NexPoint back in the beginning of December?</p> <p>14 A. I – I do remember that, and I did</p> <p>15 get a summary of that, and it was untenable in</p> <p>16 terms of what it was wrapped in.</p> <p>17 Q. What was untenable about it?</p> <p>18 A. Off the top of my head, it would give</p> <p>19 Seery releases for bad acts or inappropriate</p> <p>20 trades. It required a reimbursement for, I</p> <p>21 think, a million dollars of Pachulski fees</p> <p>22 relative to this subject, and I think it also</p> <p>23 wanted an up-front payment for the present value</p> <p>24 of the future management fees to be paid to the</p> <p>25 estate.</p>

<p>Page 102</p> <p>1 J. DONDERO</p> <p>2 Q. And who made the decision to reject</p> <p>3 the debtor's offer?</p> <p>4 A. Made a decision to reject the –</p> <p>5 reject the – it wasn't a rejection of the offer</p> <p>6 as much as a disagreement that that is the way</p> <p>7 CLO contracts transfer, that the manager doesn't</p> <p>8 have the right to extort from the next manager</p> <p>9 when the investors want to transfer.</p> <p>10 So there's a facilitation that</p> <p>11 Highland could provide, but Highland is not in a</p> <p>12 position, based on our understanding of the</p> <p>13 market, to demand consideration.</p> <p>14 Q. Okay. Who made the decision to</p> <p>15 reject the offer?</p> <p>16 A. I was involved in that. It wasn't a</p> <p>17 formal rejection, but it was a view that it was</p> <p>18 an inappropriate offer.</p> <p>19 Q. Did anybody decide or suggest that</p> <p>20 maybe we should make an appropriate offer?</p> <p>21 A. Not yet.</p> <p>22 Q. Was there any reason why, for the</p> <p>23 past month, when the debtor has provided an</p> <p>24 opportunity to transfer these CLO management</p> <p>25 contracts, that none of the advisors or anybody</p>	<p>Page 103</p> <p>1 J. DONDERO</p> <p>2 representing them has sought fit to make an</p> <p>3 appropriate counteroffer?</p> <p>4 A. We can get an appropriate</p> <p>5 counteroffer out tomorrow.</p> <p>6 Q. Okay. Is there anything that's</p> <p>7 prevented that over the last month instead of</p> <p>8 writing letters and engaging in this litigation?</p> <p>9 A. The fundamental prerequisites were so</p> <p>10 inappropriate that it dissuaded us from putting a</p> <p>11 normal, commercial, reasonable thing forward.</p> <p>12 But we'll put something commercial, reasonable</p> <p>13 and appropriate through tomorrow, and we'll see</p> <p>14 how far it goes.</p> <p>15 Q. Did you support the sending of this</p> <p>16 particular letter at the time it was sent?</p> <p>17 A. I – generally, yes.</p> <p>18 Q. Okay. Have you authorized any of the</p> <p>19 entities on this letter to initiate the process</p> <p>20 to remove the debtor as the fund manager of any</p> <p>21 CLO?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. That's not my position, and it's not</p> <p>24 without legal considerations regarding what's</p> <p>25 subject to a stay and what's appropriate at this</p>
<p>Page 104</p> <p>1 J. DONDERO</p> <p>2 juncture.</p> <p>3 But – but I believe, subject to</p> <p>4 whatever is legally appropriate, they should and</p> <p>5 they will be moving to replace the manager as</p> <p>6 quickly as possible and holding the manager</p> <p>7 responsible for bad acts prior to transfer.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Have you authorized any of the</p> <p>10 parties that are signatory to this letter to</p> <p>11 initiate the process to remove the debtor as the</p> <p>12 fund manager for the CLOs?</p> <p>13 A. I am not that involved. I haven't</p> <p>14 authorized it per se. Again, I'm encouraging the</p> <p>15 executives in charge to do the right thing, given</p> <p>16 the circumstances and what's best for investors,</p> <p>17 especially their retail investors and their</p> <p>18 obligations under the '40 Act.</p> <p>19 Q. You're the president of the two</p> <p>20 advisors, right?</p> <p>21 A. Yes.</p> <p>22 Q. And you're the portfolio manager of</p> <p>23 the funds, right?</p> <p>24 A. Yes.</p> <p>25 Q. Couldn't you give the direction to</p>	<p>Page 105</p> <p>1 J. DONDERO</p> <p>2 take steps to initiate the process to remove the</p> <p>3 debtor?</p> <p>4 MR. BONDS: I'm sorry, can you repeat</p> <p>5 the question?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Don't you have the power to do that?</p> <p>8 MR. BONDS: I'm sorry. I couldn't</p> <p>9 hear your question.</p> <p>10 MR. MORRIS: Withdrawn.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever discuss with any – with</p> <p>13 anybody about whether to initiate the process to</p> <p>14 remove the debtor as the portfolio manager of the</p> <p>15 CLOs?</p> <p>16 A. I think it's a logical remedy, and I</p> <p>17 believe the executives, and particularly like the</p> <p>18 executives – the chief compliance officer always</p> <p>19 has personal liability, and I think Jason Post</p> <p>20 knows that, and I think he's pushing as hard as</p> <p>21 he can for the benefit of investors in a</p> <p>22 situation where people are moving against the</p> <p>23 best interests of investors.</p> <p>24 And I encourage him to move as</p> <p>25 aggressively as possible subject to whatever the</p>



<p>Page 106</p> <p>1 J. DONDERO</p> <p>2 limits of bankruptcy court is, but I can't be –</p> <p>3 I've got too many other things to do to be</p> <p>4 directly involved in the details, so I'm not</p> <p>5 involved in the details.</p> <p>6 Q. I see.</p> <p>7 Did you ever instruct the parties</p> <p>8 that are signatory – withdrawn.</p> <p>9 Did you ever instruct K&amp;L Gates to</p> <p>10 withdraw this letter?</p> <p>11 A. No.</p> <p>12 Q. To the best of your knowledge, has</p> <p>13 anybody on behalf of the advisors, the funds or</p> <p>14 CLO Holdco ever instructed K&amp;L Gates to withdraw</p> <p>15 this letter?</p> <p>16 A. No.</p> <p>17 Q. Will you commit that each of the</p> <p>18 entities on whose behalf this letter was sent</p> <p>19 will cease and desist from taking any steps to</p> <p>20 initiate the process to remove the debtor as the</p> <p>21 CLO manager?</p> <p>22 MR. BONDS: Objection, form.</p> <p>23 A. Say that again.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Will you commit on behalf of each of</p>	<p>Page 107</p> <p>1 J. DONDERO</p> <p>2 the funds and the advisors to cease and desist</p> <p>3 from taking any steps to replace the debtor as</p> <p>4 the portfolio manager of the CLOs?</p> <p>5 A. That would be inappropriate. I'm not</p> <p>6 sure it would be illegal, but I think it would be</p> <p>7 a regulatory breach, and I think it would not be</p> <p>8 in the best interest of investors if we were to</p> <p>9 agree to anything like that. I think that's nuts</p> <p>10 and it's nutty to ask that.</p> <p>11 Q. People say that about me all the</p> <p>12 time.</p> <p>13 Did you ever exchange any e-mails or</p> <p>14 texts with any employee of the parties on this</p> <p>15 document, on the issue of whether or how to</p> <p>16 remove the debtor as the CLO's fund manager?</p> <p>17 A. Not that I recall.</p> <p>18 Q. Did you ever discuss with any</p> <p>19 employee of the debtor the topic of removing the</p> <p>20 debtor as the portfolio manager of the CLOs?</p> <p>21 A. Not that I recall.</p> <p>22 MR. MORRIS: Okay. It's 1:35. Can</p> <p>23 we just take a ten-minute break and resume – is</p> <p>24 it 12:35 where you are, Mr. Dondero? We'll</p> <p>25 resume at 1:45 Eastern, 12:45 Central.</p>
<p>Page 108</p> <p>1 J. DONDERO</p> <p>2 THE WITNESS: I'm sorry, I can't hear</p> <p>3 you. We return at what time?</p> <p>4 MR. MORRIS: In ten minutes, at</p> <p>5 12:45.</p> <p>6 MR. BONDS: And I want to say too,</p> <p>7 John, that your notice showed that there was a</p> <p>8 1:30 deposition Central Time of somebody else,</p> <p>9 and we intend – I mean, we planned on that, so</p> <p>10 we're going to need to be through at 1:30.</p> <p>11 MR. MORRIS: Yeah, you can do that if</p> <p>12 you want. You can do that if you want, but the</p> <p>13 record will also reflect that we started at least</p> <p>14 20 minutes late and we took at least a 35-minute</p> <p>15 break for Mr. Dondero. So you leave whenever you</p> <p>16 want, but be guided by that.</p> <p>17 Let's take a break.</p> <p>18 MR. BONDS: Well, I'm telling you</p> <p>19 that if you want to go forward, you can.</p> <p>20 MR. MORRIS: I will. Thank you. I</p> <p>21 appreciate that.</p> <p>22 THE WITNESS: All right. See you</p> <p>23 guys in 10 minutes.</p> <p>24 THE VIDEOGRAPHER: 12:36 p.m.,</p> <p>25 Central Standard Time. We're off the record.</p>	<p>Page 109</p> <p>1 J. DONDERO</p> <p>2 (Recess taken, 12:36 p.m. to</p> <p>3 12:49 p.m. CST)</p> <p>4 THE VIDEOGRAPHER: 12:49 p.m.,</p> <p>5 Central Standard Time. We're back on the record.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. All right. Can you hear me,</p> <p>8 Mr. Dondero?</p> <p>9 A. Yes.</p> <p>10 Q. Is it fair – do you think it's fair</p> <p>11 to say that your personal interests are adverse</p> <p>12 to the debtor's?</p> <p>13 A. No.</p> <p>14 Q. They asked for your resignation back</p> <p>15 in October, right?</p> <p>16 A. Yes.</p> <p>17 Q. And you opposed the debtor's plan on</p> <p>18 file, right?</p> <p>19 A. Yes.</p> <p>20 Q. And you objected to the debtor's</p> <p>21 settlement with ACIS; is that right?</p> <p>22 A. Yes.</p> <p>23 Q. And you're going to object to the</p> <p>24 debtor's settlement with HarbourVest; is that</p> <p>25 right?</p>

<p>Page 110</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: Objection, form.</p> <p>3 A. I don't know for sure. I believe so.</p> <p>4 I don't know.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. And the debtor commenced an adversary</p> <p>7 proceeding against you; is that right?</p> <p>8 MR. BONDS: Objection, form.</p> <p>9 A. I'm not aware of that in particular.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. The debtor sought and obtained a TRO</p> <p>12 against you; isn't that right?</p> <p>13 A. Oh. Okay, yes.</p> <p>14 Q. And they also started a lawsuit?</p> <p>15 They filed a complaint against you -- is that</p> <p>16 right -- for preliminary and permanent injunctive</p> <p>17 relief?</p> <p>18 A. I'm aware of it, yes.</p> <p>19 Q. And the debtor has removed you from</p> <p>20 its offices, right?</p> <p>21 A. Yes.</p> <p>22 Q. And based on all of that, would you</p> <p>23 agree that your personal interests are adverse to</p> <p>24 the debtor?</p> <p>25 A. No.</p>	<p>Page 111</p> <p>1 J. DONDERO</p> <p>2 Q. Okay. Since the TRO was entered,</p> <p>3 have you ever discussed your litigation strategy</p> <p>4 with Mr. Ellington?</p> <p>5 A. Not -- no. Not that I'm aware of.</p> <p>6 That's not the subject of our conversations.</p> <p>7 He's more of a go-between, and he's more of an</p> <p>8 overall strategist.</p> <p>9 Q. And he's a strategist for your -- you</p> <p>10 know, for the defense and prosecution of your</p> <p>11 personal interests, right?</p> <p>12 A. No.</p> <p>13 Q. No?</p> <p>14 Do you remember that there were</p> <p>15 actually two motions on the calendar on</p> <p>16 December 16th? There was the motion that you</p> <p>17 brought that was called, I guess, the active</p> <p>18 ordinary course transactions motion, and then</p> <p>19 there was the motion brought by the K&amp;L Gates</p> <p>20 firm on behalf of -- (audio malfunction) --</p> <p>21 (Clarification requested by the</p> <p>22 stenographer.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. -- the advisors and the funds, where</p> <p>25 they sought the pause of the sale of CLO assets.</p>
<p>Page 112</p> <p>1 J. DONDERO</p> <p>2 Do you remember that those two</p> <p>3 motions were on the calendar a couple of weeks</p> <p>4 ago?</p> <p>5 A. I remember that K&amp;L Gates one. The</p> <p>6 first one, I don't remember.</p> <p>7 Q. Do you remember discussing with</p> <p>8 Mr. Ellington the need for a witness for one of</p> <p>9 those motions?</p> <p>10 A. No. I don't remember the motion.</p> <p>11 Q. Do you remember that Mr. Ellington</p> <p>12 suggested that J.P. Sevilla serve as a witness</p> <p>13 for one of those motions?</p> <p>14 A. I don't remember that.</p> <p>15 MR. MORRIS: Put up Exhibit 15,</p> <p>16 please.</p> <p>17 (Dondero Deposition Exhibit 15</p> <p>18 marked.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. If we can go down here, do you see</p> <p>21 that on Saturday, December 12th, Mr. Lynn wrote</p> <p>22 to you and said: It looks like a trial?</p> <p>23 A. Yes.</p> <p>24 Q. Can you scroll up above that, please.</p> <p>25 Keep going. And then Mr. Lynn -- I'm sorry, not</p>	<p>Page 113</p> <p>1 J. DONDERO</p> <p>2 so much.</p> <p>3 And then Mr. Lynn wrote: That said,</p> <p>4 we must have a witness now.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Now, go up to the top, and</p> <p>8 Mr. Ellington writes to you and to others: It</p> <p>9 will be J.P. Sevilla. I will tell him that he</p> <p>10 needs to contact you first thing in the morning.</p> <p>11 Have I read that correctly?</p> <p>12 A. Yes.</p> <p>13 Q. Now, this is after the TRO is</p> <p>14 entered, right?</p> <p>15 A. Like I said, I'm not -- I see my name</p> <p>16 on the cc list. I don't have an awareness of</p> <p>17 what this is about, so...</p> <p>18 Q. Okay. Do you know what trial</p> <p>19 Mr. Sevilla was going to testify at?</p> <p>20 A. No.</p> <p>21 Q. You didn't produce --</p> <p>22 A. You can refresh my memory, but I</p> <p>23 don't have a recollection from this.</p> <p>24 Q. To be fair, Mr. Dondero, I don't</p> <p>25 know. This is discovery, and I'm just asking a</p>

<p>Page 114</p> <p>1 J. DONDERO</p> <p>2 question, if you know.</p> <p>3 A. Okay.</p> <p>4 Q. Do you recall if you produced this</p> <p>5 e-mail in discovery?</p> <p>6 A. I have no idea.</p> <p>7 Q. Do you recall looking to</p> <p>8 Mr. Ellington for leadership in helping to</p> <p>9 coordinate all the lawyers acting on your behalf</p> <p>10 and on behalf of the entities owned and</p> <p>11 controlled by you?</p> <p>12 A. I know I needed some coordination,</p> <p>13 but I think I went in a different direction, and</p> <p>14 that's why I brought on Douglas Draper, and he's</p> <p>15 been functioning in that role of joint defense</p> <p>16 and coordination.</p> <p>17 Q. But you did tell Mr. Ellington, after</p> <p>18 the TRO was entered, that you needed him to</p> <p>19 provide leadership with respect to the</p> <p>20 coordination of your litigation interests, right?</p> <p>21 A. I – I don't – I don't remember.</p> <p>22 Like I said, I ended up going in a different</p> <p>23 direction, but I – I don't – I don't know as</p> <p>24 far as your question is concerned.</p> <p>25 MR. MORRIS: Okay. Can we put up</p>	<p>Page 115</p> <p>1 J. DONDERO</p> <p>2 Exhibit 16, please.</p> <p>3 (Dondero Deposition Exhibit 16</p> <p>4 marked.)</p> <p>5 MR. MORRIS: Scroll down to the</p> <p>6 bottom. Not that far. Right there.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. So this is an e-mail from Mr. Draper</p> <p>9 to you on December 16th.</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 MR. BONDS: I'm going to object.</p> <p>13 Mr. Draper is a lawyer.</p> <p>14 MR. MORRIS: He is. I understand</p> <p>15 that.</p> <p>16 MR. BONDS: Anything that was</p> <p>17 produced that relates to Douglas Draper and Mike</p> <p>18 Lynn and Jim Dondero is attorney-client</p> <p>19 privileged.</p> <p>20 MR. MORRIS: You're entitled to make</p> <p>21 that assertion, but if we just look at the top so</p> <p>22 we can clear this up. All the way to the top.</p> <p>23 Mr. Dondero forwards this to Mr. Ellington.</p> <p>24 Mr. Ellington is not Mr. Dondero's personal</p> <p>25 lawyer. He is the lawyer for the debtor, and</p>
<p>Page 116</p> <p>1 J. DONDERO</p> <p>2 your firm doesn't represent any business</p> <p>3 interest, so there's no claim that this is</p> <p>4 somehow provided pursuant to a shared services</p> <p>5 agreement. Unless you can tell me that there's a</p> <p>6 common – (audio malfunction) –</p> <p>7 (Clarification requested by the</p> <p>8 stenographer.)</p> <p>9 MR. MORRIS: – a common interest</p> <p>10 between Mr. Ellington and Mr. Dondero,</p> <p>11 Mr. Dondero has waived the privilege. State your</p> <p>12 position, and I'm happy to state mine, but I need</p> <p>13 to ask questions.</p> <p>14 Can we go back down to the bottom,</p> <p>15 please. All right.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. So on December 16th, Mr. Draper is</p> <p>18 looking to get a joint meeting together, right?</p> <p>19 Do you remember that?</p> <p>20 A. I'm sorry, what's the question?</p> <p>21 Q. Do you recall that on or around</p> <p>22 December 16th, Mr. Draper was looking to get a</p> <p>23 joint meeting among all the lawyers representing</p> <p>24 you and your business interests as well as the</p> <p>25 employees for Highland?</p>	<p>Page 117</p> <p>1 J. DONDERO</p> <p>2 A. What I do know is Douglas Draper has</p> <p>3 put together a mutual defense agreement, and I</p> <p>4 think the 16th is right about when he came on</p> <p>5 board. He had to reach out and get people's</p> <p>6 e-mails and contact information and be able to</p> <p>7 coordinate it.</p> <p>8 But he's now fully engaged and fully</p> <p>9 functional in that role. Ellington is not</p> <p>10 involved in that role at all. Can you – but I</p> <p>11 don't know exact time frames or exactly who said</p> <p>12 what to who when, but go ahead, ask me whatever</p> <p>13 you want.</p> <p>14 Q. You mentioned a mutual defense</p> <p>15 agreement. Do I have that right?</p> <p>16 MR. BONDS: Objection –</p> <p>17 A. I don't know what – I don't know</p> <p>18 what the legal term is.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Okay. But there's a joint –</p> <p>21 MR. BONDS: Don't talk about that,</p> <p>22 Jim.</p> <p>23 MR. MORRIS: Okay.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Let me ask you this: Did Scott</p>



<p>Page 118</p> <p>1 J. DONDERO</p> <p>2 Ellington participate in the drafting of the</p> <p>3 joint interest or mutual defense agreement?</p> <p>4 A. No.</p> <p>5 Q. Did Isaac Leventon participate in the</p> <p>6 drafting of a joint defense or mutual defense</p> <p>7 agreement?</p> <p>8 A. No.</p> <p>9 Q. Did you ever discuss with either of</p> <p>10 them the topic of a joint defense or a mutual</p> <p>11 defense agreement?</p> <p>12 A. That was entirely with Draper.</p> <p>13 Q. Okay. Let's scroll up the page a</p> <p>14 little bit. There's a response from Mr. Lynn.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then if we scroll up a little</p> <p>18 further, you forward it to Mr. Ellington, right?</p> <p>19 If we can go to the –</p> <p>20 A. Yes.</p> <p>21 Q. And you said: I'm going to need you</p> <p>22 to provide leadership here.</p> <p>23 Have I read that correctly?</p> <p>24 A. Yes.</p> <p>25 Q. Why did you send this e-mail string</p>	<p>Page 119</p> <p>1 J. DONDERO</p> <p>2 to Mr. Ellington on December 16th?</p> <p>3 A. I don't remember.</p> <p>4 Q. What leadership were you looking for?</p> <p>5 A. I can't piece it together from here.</p> <p>6 I don't remember. I can't piece it together from</p> <p>7 the e-mail, and I don't remember.</p> <p>8 Q. Why did you need Mr. Ellington to</p> <p>9 provide leadership?</p> <p>10 A. I don't know.</p> <p>11 Q. Does –</p> <p>12 A. I don't remember.</p> <p>13 Q. Okay. Does looking at the topic, a</p> <p>14 list for a joint meeting, refresh your</p> <p>15 recollection that you wanted Mr. Ellington to</p> <p>16 coordinate all of the lawyers working on your</p> <p>17 behalf and on behalf of the entities in which you</p> <p>18 own an interest?</p> <p>19 A. No. I mean, because that was the</p> <p>20 beginning of the string, but the middle of the</p> <p>21 string starts going in different directions. I</p> <p>22 can't say – I can't say what I wanted him to</p> <p>23 have leadership with.</p> <p>24 Q. Can you think of any – any issue at</p> <p>25 all, looking at this e-mail string, as to what he</p>
<p>Page 120</p> <p>1 J. DONDERO</p> <p>2 would be providing leadership for if it's not to</p> <p>3 coordinate your defense counsel?</p> <p>4 A. I don't want to speculate, but</p> <p>5 again – I don't want to speculate, but again,</p> <p>6 the middle of the string looks like it goes in</p> <p>7 different directions than just forming the mutual</p> <p>8 defense thing.</p> <p>9 Q. Okay. So you have no recollection</p> <p>10 why you forwarded this e-mail to Mr. Ellington on</p> <p>11 December 16th and why you told him that you need</p> <p>12 him to provide leadership here; is that your</p> <p>13 testimony?</p> <p>14 A. Correct.</p> <p>15 Q. Is Mr. Ellington a party to any joint</p> <p>16 defense or mutual defense agreement that you're a</p> <p>17 party to?</p> <p>18 A. I believe the employees' counsel is</p> <p>19 part of the working group, although I've been on</p> <p>20 calls when the employees' counsel has been on and</p> <p>21 when it hasn't. But I don't even – I think the</p> <p>22 employee group is divided into a couple different</p> <p>23 groups, and I don't know if Ellington is part of</p> <p>24 both groups.</p> <p>25 But I – Ellington individually is</p>	<p>Page 121</p> <p>1 J. DONDERO</p> <p>2 not part of the working group, and I'm not sure</p> <p>3 which, if one or both, of the employee groups</p> <p>4 he's in.</p> <p>5 Q. So there's two employee groups; is</p> <p>6 that right?</p> <p>7 A. I'm beyond my involvement and</p> <p>8 expertise, but I thought there were two employee</p> <p>9 groups, but I don't even know that for sure.</p> <p>10 Q. And has your counsel conferred with</p> <p>11 counsel for either or both of the employee</p> <p>12 groups?</p> <p>13 MR. BONDS: I'm sorry, can you repeat</p> <p>14 the question?</p> <p>15 MR. MORRIS: Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Has your counsel at Bonds Ellis</p> <p>18 conferred with counsel for either or both of the</p> <p>19 employee groups?</p> <p>20 A. I don't know.</p> <p>21 MR. MORRIS: John, I would call for</p> <p>22 the immediate production of any –</p> <p>23 MR. BONDS: I don't think we have it,</p> <p>24 but I can check on that.</p> <p>25 MR. MORRIS: I would call for the</p>

<p>Page 122</p> <p>1 J. DONDERO</p> <p>2 immediate production of any joint defense or</p> <p>3 mutual defense agreement to which any debtor</p> <p>4 employee is a party –</p> <p>5 MR. BONDS: I don't think that there</p> <p>6 are any.</p> <p>7 MR. MORRIS: And I would call for any</p> <p>8 drafts, okay?</p> <p>9 MR. BONDS: Again, I don't think</p> <p>10 there are any.</p> <p>11 MR. MORRIS: Okay. You can give me</p> <p>12 that representation.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Let's look at the top, at</p> <p>15 Mr. Ellington's response. And what did he tell</p> <p>16 you in response to your statement that you need</p> <p>17 him to provide leadership?</p> <p>18 A. You mean the two words there?</p> <p>19 Q. Yep.</p> <p>20 A. It looks like he typed back: On it.</p> <p>21 Q. Yeah.</p> <p>22 Did Mr. Ellington subsequently</p> <p>23 provide leadership, as you had asked?</p> <p>24 A. I don't remember. Nothing I can</p> <p>25 recall.</p>	<p>Page 123</p> <p>1 J. DONDERO</p> <p>2 Q. Did Mr. Ellington ever participate in</p> <p>3 any conference calls with your counsel at Bonds</p> <p>4 Ellis?</p> <p>5 A. Not that – not that I recall.</p> <p>6 Ellington's time has been spent primarily, the</p> <p>7 vast majority, representing and working with the</p> <p>8 employee group. I know that. It's been</p> <p>9 difficult to get his attention on anything else</p> <p>10 so –</p> <p>11 Q. Listen carefully to my question. I'm</p> <p>12 not asking you to tell me what Mr. Ellington</p> <p>13 does. I'm simply asking whether you know that</p> <p>14 Mr. Ellington has participated in conference</p> <p>15 calls with your counsel at Bonds Ellis at any</p> <p>16 time after December 10th.</p> <p>17 A. I don't know.</p> <p>18 Q. Did you ever participate in any calls</p> <p>19 with Mr. Ellington and any lawyer at Bonds Ellis?</p> <p>20 A. Over the year, for sure. There have</p> <p>21 been – earlier in the year there were several</p> <p>22 times, but I can't recall one recently.</p> <p>23 Q. So you have no recollection of ever</p> <p>24 participating in a phone call with Mr. Ellington</p> <p>25 and any lawyer at Bonds Ellis at any time since</p>
<p>Page 124</p> <p>1 J. DONDERO</p> <p>2 December 10th; is that your testimony?</p> <p>3 A. I – I can't recall. I'm willing to</p> <p>4 be refreshed. I can't recall. There were –</p> <p>5 there were – some of the calls that stick out in</p> <p>6 my mind I believe occurred prior to that date, so</p> <p>7 I can't – I can't recall any post that date.</p> <p>8 Q. Okay. You didn't produce this e-mail</p> <p>9 in response to the Court's order, did you?</p> <p>10 A. I don't know.</p> <p>11 Q. And that's because you didn't take</p> <p>12 the time to look at the production before it was</p> <p>13 delivered to my firm, right?</p> <p>14 A. I – I believe the – yeah, I mean,</p> <p>15 it's a process I don't – I don't get directly</p> <p>16 involved in. Counsel has to decide what's</p> <p>17 responsive, what's privileged, what's complete,</p> <p>18 what's appropriate. That's not my job.</p> <p>19 Q. Are you aware that any documents for</p> <p>20 which a privilege was asserted were supposed to</p> <p>21 be delivered to the Court last December 31st?</p> <p>22 A. I'm not saying that's what – I have</p> <p>23 no idea whether we produced this or didn't</p> <p>24 produce it. And if we didn't, I don't know why.</p> <p>25 Q. Do you know that the UCC has asked</p>	<p>Page 125</p> <p>1 J. DONDERO</p> <p>2 for the financial statements for Dugaboy and Get</p> <p>3 Good?</p> <p>4 MR. BONDS: Objection, you're going</p> <p>5 far afield from where we're – this TRO.</p> <p>6 MR. MORRIS: You can take that</p> <p>7 position if you want, but I assure you, when I'm</p> <p>8 done, you'll understand.</p> <p>9 MR. BONDS: I'm going to instruct the</p> <p>10 witness not to answer the question.</p> <p>11 MR. MORRIS: You're not going to let</p> <p>12 him answer as to whether or not the UCC wanted</p> <p>13 the Dugaboy and Get Good financial statements?</p> <p>14 MR. BONDS: I can't hear you.</p> <p>15 MR. MORRIS: Yeah, I apologize.</p> <p>16 It's – it's not me, John. Let me just ask</p> <p>17 again. Are you – you're going to instruct your</p> <p>18 witness not to answer the question of whether he</p> <p>19 knew that the UCC wanted the Dugaboy and Get Good</p> <p>20 financial statements?</p> <p>21 MR. BONDS: I'll let you go one –</p> <p>22 you can ask that one question. But anything</p> <p>23 further into Dugaboy is not something that is for</p> <p>24 the Court to determine at this point in this</p> <p>25 case.</p>

<p style="text-align: right;">Page 126</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: Okay.</p> <p>3 So you can answer that question, sir.</p> <p>4 A. I think there have been several times</p> <p>5 over the last year that Dugaboy financials have</p> <p>6 been requested by a variety of entities. I don't</p> <p>7 know when or recently or if the UCC requested it</p> <p>8 recently.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You know a number of different</p> <p>11 parties have asked for the Dugaboy and Get Good</p> <p>12 financial statements; is that right?</p> <p>13 MR. BONDS: I'm going to object to</p> <p>14 any answer that you may give following up on</p> <p>15 Dugaboy. Dugaboy is not subject to the TRO and</p> <p>16 you're stuck with your adversary proceeding.</p> <p>17 MR. MORRIS: John, there is a text</p> <p>18 message that we're going to get to in a moment,</p> <p>19 so I'll end the suspense. Mr. Dondero</p> <p>20 specifically says: Don't produce the Dugaboy</p> <p>21 financial statements without a subpoena. Those</p> <p>22 documents were in the debtor's possession. I</p> <p>23 will tell you that I personally made at least a</p> <p>24 half a dozen requests of Mr. Ellington and</p> <p>25 Mr. Leventon for those documents.</p>	<p style="text-align: right;">Page 127</p> <p>1 J. DONDERO</p> <p>2 I will tell you that Jim Seery</p> <p>3 instructed them to provide those documents</p> <p>4 because they're in the debtor's possession,</p> <p>5 custody and control.</p> <p>6 I will tell you that there's no</p> <p>7 shared services agreement between Dugaboy or Get</p> <p>8 Good and the debtor, and there is no basis for</p> <p>9 those – for Mr. Ellington and Mr. Leventon to</p> <p>10 have obstructed the debtor's obligation to</p> <p>11 provide those documents except in Mr. Dondero's</p> <p>12 hands.</p> <p>13 MR. BONDS: I'm going to instruct the</p> <p>14 witness not to answer the question.</p> <p>15 MR. MORRIS: I think that might be a</p> <p>16 good idea. On what basis?</p> <p>17 MR. BONDS: I don't need to give a</p> <p>18 basis. I think that you've gone far, far from</p> <p>19 what we're here on today, which is –</p> <p>20 MR. MORRIS: I believe that it's –</p> <p>21 MR. BONDS: – specifically –</p> <p>22 MR. MORRIS: I'm sorry to interrupt.</p> <p>23 Go ahead, John.</p> <p>24 MR. BONDS: Specifically, it's the</p> <p>25 TRO and the injunction.</p>
<p style="text-align: right;">Page 128</p> <p>1 J. DONDERO</p> <p>2 MR. MORRIS: Correct. And the TRO</p> <p>3 specifically – I know Mr. Dondero doesn't know</p> <p>4 this because he hasn't read the document, but in</p> <p>5 addition to the things that he mentioned, it also</p> <p>6 prevents him from interfering with the debtor's</p> <p>7 business.</p> <p>8 The debtor is a litigant here. The</p> <p>9 debtor has an obligation to provide these</p> <p>10 documents. And he interfered with that</p> <p>11 obligation.</p> <p>12 Let me ask my questions and you can</p> <p>13 direct him not to answer every single time if you</p> <p>14 want, okay?</p> <p>15 MR. BONDS: Okay.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you know a woman named Melissa,</p> <p>18 Mr. Dondero?</p> <p>19 A. Yes.</p> <p>20 Q. And who is that?</p> <p>21 A. She's my personal accountant.</p> <p>22 Q. Does she work at the Highland</p> <p>23 offices?</p> <p>24 A. Yes.</p> <p>25 Q. Is she employed by the debtor?</p>	<p style="text-align: right;">Page 129</p> <p>1 J. DONDERO</p> <p>2 A. I believe so.</p> <p>3 Q. Do you know what her title is?</p> <p>4 A. No.</p> <p>5 Q. Do you directly or indirectly</p> <p>6 control – withdrawn.</p> <p>7 Do you directly or indirectly own</p> <p>8 Dugaboy?</p> <p>9 A. No.</p> <p>10 Q. Who owns Dugaboy?</p> <p>11 MR. BONDS: I'm going to instruct the</p> <p>12 witness not to answer that question.</p> <p>13 MR. MORRIS: Are you going to follow</p> <p>14 your counselor's advice?</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Who controls Dugaboy?</p> <p>18 MR. BONDS: I'm going to instruct the</p> <p>19 witness not to answer that question, for the</p> <p>20 second time.</p> <p>21 MR. MORRIS: Are you going to</p> <p>22 follow – yeah, we'll do this every time, John,</p> <p>23 just for the record.</p> <p>24 MR. BONDS: That's fine.</p> <p>25 MR. MORRIS: So I apologize. I</p>

<p>Page 130</p> <p>1 J. DONDERO</p> <p>2 appreciate, you know, you do your job, I'll do</p> <p>3 mine.</p> <p>4 Mr. Dondero, are you going to follow</p> <p>5 your counsel's advice?</p> <p>6 THE WITNESS: Yes.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. To the best of your knowledge,</p> <p>9 Dugaboy does not have a shared services agreement</p> <p>10 with the debtor, correct?</p> <p>11 You can answer, sir.</p> <p>12 THE WITNESS: I'm not answering,</p> <p>13 right? I'm not answering any questions on this</p> <p>14 subject.</p> <p>15 MR. MORRIS: Only if your lawyer</p> <p>16 instructs you to do that, and he hasn't done that</p> <p>17 for this question.</p> <p>18 MR. BONDS: I'm going to instruct the</p> <p>19 witness not to answer the question.</p> <p>20 MR. MORRIS: You're not going to let</p> <p>21 him answer whether Dugaboy has a shared services</p> <p>22 agreement with the debtor?</p> <p>23 MR. BONDS: I think that you're</p> <p>24 entitled to that, so Jim, you can answer that</p> <p>25 question.</p>	<p>Page 131</p> <p>1 J. DONDERO</p> <p>2 A. I – I don't know.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. Are you familiar with an</p> <p>5 entity called Get Good?</p> <p>6 A. Yes.</p> <p>7 Q. Do you directly or indirectly own Get</p> <p>8 Good?</p> <p>9 A. No.</p> <p>10 Q. Do you control, directly or</p> <p>11 indirectly, Get Good?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Who owns Get Good?</p> <p>14 MR. BONDS: I'm going to instruct the</p> <p>15 witness not to answer the question.</p> <p>16 MR. MORRIS: Are you going to follow</p> <p>17 your counselor's advice?</p> <p>18 THE WITNESS: Yes.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Who controls Get Good?</p> <p>21 MR. BONDS: Instruct the witness not</p> <p>22 to answer the question.</p> <p>23 MR. MORRIS: Are you going to follow</p> <p>24 your counselor's advice, Mr. Dondero?</p> <p>25 THE WITNESS: I'm going to follow his</p>
<p>Page 132</p> <p>1 J. DONDERO</p> <p>2 advice, yes.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. To the best of your knowledge, Get</p> <p>5 Good does not have a shared services agreement</p> <p>6 with the debtor, does it?</p> <p>7 THE WITNESS: Can I answer that or</p> <p>8 not answer that one?</p> <p>9 MR. BONDS: Yes, you can.</p> <p>10 A. I don't know.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever discuss the request by</p> <p>13 any party to produce the financial statements of</p> <p>14 Get Good and Dugaboy with Scott Ellington?</p> <p>15 MR. BONDS: I'm going to tell you –</p> <p>16 advise you not to answer the question.</p> <p>17 MR. MORRIS: Are you going to follow</p> <p>18 your counselor's advice?</p> <p>19 THE WITNESS: Yes.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Did you ever communicate with</p> <p>22 Mr. Leventon on the subject matter of whether or</p> <p>23 not the financial statements for Get Good and</p> <p>24 Dugaboy needed to be produced by the debtor?</p> <p>25 MR. BONDS: I'm going to advise the</p>	<p>Page 133</p> <p>1 J. DONDERO</p> <p>2 witness not to answer the question.</p> <p>3 MR. MORRIS: Are you going to follow</p> <p>4 your counselor's advice?</p> <p>5 THE WITNESS: Yes.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Did you ever communicate with anybody</p> <p>8 at any time who was employed by the debtor</p> <p>9 regarding the production of the Dugaboy and Get</p> <p>10 Good financial statements?</p> <p>11 MR. BONDS: I'm going to instruct the</p> <p>12 witness not to answer the question.</p> <p>13 MR. MORRIS: Are you going to follow</p> <p>14 your counselor's advice?</p> <p>15 THE WITNESS: Yes.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Melissa is Melissa Schroth, right?</p> <p>18 A. Yes.</p> <p>19 Q. She's an executive accountant</p> <p>20 employed by the debtor, right?</p> <p>21 A. Yes.</p> <p>22 Q. And after December 10th, 2020</p> <p>23 Ms. Schroth told you that a request had been made</p> <p>24 for the production of the Dugaboy financial</p> <p>25 statements, correct?</p>

<p>Page 134</p> <p>1 J. DONDERO</p> <p>2 MR. BONDS: You can answer the</p> <p>3 question.</p> <p>4 A. I don't remember.</p> <p>5 MR. MORRIS: Okay. Can we put up</p> <p>6 Exhibit 17, please.</p> <p>7 (Dondero Deposition Exhibit 17</p> <p>8 marked.)</p> <p>9 MR. MORRIS: Can you scroll down a</p> <p>10 little bit? I'm sorry. Scroll up so we can see</p> <p>11 who this text was sent to.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is that Melissa Schroth?</p> <p>14 A. Yes.</p> <p>15 Q. And if we scroll back down, do you</p> <p>16 see that you tell Ms. Schroth on December 16th:</p> <p>17 No Dugaboy details without a subpoena?</p> <p>18 A. Yes.</p> <p>19 Q. That's a text that you sent to her on</p> <p>20 December 16th, correct?</p> <p>21 A. I believe so.</p> <p>22 Q. What prompted you to send this text?</p> <p>23 A. I don't know.</p> <p>24 Q. You don't have any recollection as to</p> <p>25 why you would tell Melissa, quote, no Dugaboy</p>	<p>Page 135</p> <p>1 J. DONDERO</p> <p>2 details without a subpoena?</p> <p>3 A. No, but that would – I mean, I stand</p> <p>4 behind that response, but I don't remember why.</p> <p>5 Q. Do you remember who was asking for</p> <p>6 the documents?</p> <p>7 A. Nope.</p> <p>8 Q. Do you remember any discussion with</p> <p>9 any person at any time concerning the production</p> <p>10 of the Dugaboy or Get Good financial statements?</p> <p>11 A. Nope.</p> <p>12 Q. Do you have any objection to the</p> <p>13 debtor producing the Dugaboy and Get Good</p> <p>14 financial statements?</p> <p>15 A. I'm sorry, say that again?</p> <p>16 Q. Would you consent to the debtor's</p> <p>17 production of the Get Good and Dugaboy financial</p> <p>18 statements?</p> <p>19 A. With a subpoena. I stand by that</p> <p>20 statement, yeah.</p> <p>21 Q. Okay. Do you know of any reason why</p> <p>22 Mr. Ellington and Mr. Leventon would have failed</p> <p>23 to respond to Mr. Seery's instruction to produce</p> <p>24 the Dugaboy and Get Good financial statements</p> <p>25 that were requested by the – (audio</p>
<p>Page 136</p> <p>1 J. DONDERO</p> <p>2 malfunction) –</p> <p>3 (Clarification requested by the</p> <p>4 stenographer.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. – UCC?</p> <p>7 A. I don't want to speculate.</p> <p>8 Q. Have you heard of the law firm</p> <p>9 Baker &amp; McKenzie?</p> <p>10 A. Yes.</p> <p>11 Q. Does that firm or any lawyer at that</p> <p>12 firm represent you in your individual capacity?</p> <p>13 A. No.</p> <p>14 Q. Does that firm or any lawyer at that</p> <p>15 firm represent any entity in which you have a</p> <p>16 direct or indirect ownership interest?</p> <p>17 A. No. Not that I'm aware of, no.</p> <p>18 Q. I'm sorry, one second.</p> <p>19 Does that firm or any lawyer at that</p> <p>20 firm represent any entity that you directly or</p> <p>21 indirectly control?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. Do you recall asking Isaac Leventon</p> <p>24 for the contact information for the – for the</p> <p>25 lawyers at Baker &amp; McKenzie?</p>	<p>Page 137</p> <p>1 J. DONDERO</p> <p>2 A. I – I don't – I don't – it might</p> <p>3 have been for part of the shared defense, mutual</p> <p>4 defense, whatever, agreement, but that's –</p> <p>5 that's the only reason why I would have asked for</p> <p>6 it.</p> <p>7 Q. Okay. What's your understanding as</p> <p>8 to – (audio malfunction) –</p> <p>9 (Clarification requested by the</p> <p>10 stenographer.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. – the parties to that mutual defense</p> <p>13 agreement that you just referred to, or shared</p> <p>14 defense?</p> <p>15 A. I – it's what I've testified</p> <p>16 already, Douglas Draper is coordinating it.</p> <p>17 I'm – I'm not sure whether the employees are on</p> <p>18 it or not, and I'm not sure if there's one</p> <p>19 employee group or two employee groups, and I'm</p> <p>20 not sure if one or both of them are part of that</p> <p>21 agreement or not.</p> <p>22 But the – in recent history, my only</p> <p>23 awareness of Baker McKenzie is with regard to</p> <p>24 representing the employees. That's my only</p> <p>25 awareness of that firm.</p>



<p>Page 138</p> <p>1 J. DONDERO</p> <p>2 Q. Have you ever spoken with an attorney</p> <p>3 at Baker McKenzie?</p> <p>4 A. No, I have not.</p> <p>5 MR. MORRIS: Okay. Can you put up</p> <p>6 Exhibit 18, please.</p> <p>7 (Dondero Deposition Exhibit 18</p> <p>8 marked.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. That's Mr. Leventon. Do I have that</p> <p>11 right?</p> <p>12 A. Yes.</p> <p>13 Q. And you're communicating with him on</p> <p>14 or around – after December 10th, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And if you could scroll down a</p> <p>17 little bit, right there, on December 22nd, you</p> <p>18 asked Mr. Leventon to send you the Baker &amp;</p> <p>19 McKenzie contact person, right?</p> <p>20 A. Yes.</p> <p>21 Q. And if you scroll down a little bit.</p> <p>22 Did he ever send that to you?</p> <p>23 A. I'm sorry?</p> <p>24 Q. Did he ever send that to you?</p> <p>25 A. I don't know. I don't remember.</p>	<p>Page 139</p> <p>1 J. DONDERO</p> <p>2 Q. Why did you want the Baker &amp; McKenzie</p> <p>3 contact information?</p> <p>4 A. I was trying to help Draper</p> <p>5 coordinate the mutual shared defense agreement.</p> <p>6 Q. And it was your intent and desire to</p> <p>7 have the Baker McKenzie firm participate in that</p> <p>8 agreement, right?</p> <p>9 A. No. I'm not a lawyer. The</p> <p>10 appropriateness of who's in that group under what</p> <p>11 circumstances representing who was a legal</p> <p>12 decision made by Draper.</p> <p>13 Q. So why didn't you just have Draper</p> <p>14 deal with this? Why did you deal with it?</p> <p>15 A. He was scurrying around, moving</p> <p>16 quickly, trying to get contact information for</p> <p>17 potential various different parties. I was just</p> <p>18 helping him get the contact information.</p> <p>19 Q. And you –</p> <p>20 MR. BONDS: I'm going to instruct you</p> <p>21 not to say anything relating to this as far as</p> <p>22 what he and Draper discussed.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. You were aware at the time that you</p> <p>25 asked for the Baker &amp; McKenzie contact</p>
<p>Page 140</p> <p>1 J. DONDERO</p> <p>2 information that Baker &amp; McKenzie was a law firm</p> <p>3 that – that employees were considering retaining</p> <p>4 for their personal interests, right?</p> <p>5 A. I knew they were involved with the</p> <p>6 employees. Whether – whether or when they were</p> <p>7 engaged and by which employee group and – I</p> <p>8 don't have details like that. I never did.</p> <p>9 Q. But the one thing that you did know,</p> <p>10 when you asked for the Baker &amp; McKenzie contact</p> <p>11 information, is that Baker &amp; McKenzie would be</p> <p>12 representing some group of Highland employees,</p> <p>13 correct?</p> <p>14 A. Or they might be. Or they were being</p> <p>15 interviewed at the time. I think they weren't</p> <p>16 formally engaged until later. I don't know these</p> <p>17 details and never did.</p> <p>18 MR. BONDS: I'm going to instruct the</p> <p>19 witness –</p> <p>20 THE WITNESS: I'm sorry, what?</p> <p>21 MR. BONDS: You need to stop.</p> <p>22 THE WITNESS: Okay.</p> <p>23 MR. MORRIS: Why is that? Please</p> <p>24 don't interrupt the witness. Assert the</p> <p>25 privilege if you want, direct him not to answer,</p>	<p>Page 141</p> <p>1 J. DONDERO</p> <p>2 but don't interrupt his answers.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Baker McKenzie was ultimately</p> <p>5 retained by some group of the debtor's employees,</p> <p>6 correct?</p> <p>7 A. I believe so.</p> <p>8 Q. Do you know how Baker McKenzie got</p> <p>9 their retainer, their retainer money?</p> <p>10 A. No idea.</p> <p>11 Q. Do you know – are you familiar with</p> <p>12 an entity called Gov Re?</p> <p>13 A. Yes.</p> <p>14 Q. What's Gov Re?</p> <p>15 A. It's a Bermuda-based reinsurance</p> <p>16 company.</p> <p>17 Q. Do you have an ownership interest in</p> <p>18 Gov Re?</p> <p>19 A. I don't know.</p> <p>20 Q. Do any – do any entities in which</p> <p>21 you have an interest have an ownership interest</p> <p>22 in Gov Re?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know who controls Gov Re?</p> <p>25 A. I don't know.</p>



<p>Page 142</p> <p>1 J. DONDERO</p> <p>2 Q. Do you make any decisions on behalf</p> <p>3 of Gov Re?</p> <p>4 A. Not recently. Not in the last year.</p> <p>5 In prior years, I think I've helped them with</p> <p>6 investments and some strategy, but not recently.</p> <p>7 Q. Do you know whether Gov Re has made</p> <p>8 any payment to Baker &amp; McKenzie in the last</p> <p>9 30 days?</p> <p>10 A. I have no idea.</p> <p>11 Q. Did you ever have a communication</p> <p>12 with anybody at any time in the last 30 days as</p> <p>13 to – (audio malfunction) –</p> <p>14 (Clarification requested by the</p> <p>15 stenographer.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. – as to whether Gov Re would pay</p> <p>18 money to Baker &amp; McKenzie on behalf of some of</p> <p>19 the debtor's employees?</p> <p>20 A. Nope. No, I have no idea. I've</p> <p>21 never heard the daisy chain you're connecting.</p> <p>22 I've never heard it before.</p> <p>23 MR. MORRIS: Let's take a break. I</p> <p>24 might be finished. The time now is 2:32, or 1:32</p> <p>25 Central. Let's just come back sharply at 1:45,</p>	<p>Page 143</p> <p>1 J. DONDERO</p> <p>2 or 2:45.</p> <p>3 THE VIDEOGRAPHER: 1:32 p.m. Central</p> <p>4 Standard Time. We're off the record.</p> <p>5 (Recess taken, 1:32 p.m. to</p> <p>6 1:50 p.m. CST)</p> <p>7 THE VIDEOGRAPHER: 1:50 p.m. Central</p> <p>8 Standard Time. We're back on the record.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I just have a few more minutes here.</p> <p>11 Going back to Gov Re, Mr. Dondero,</p> <p>12 are you on the board of that entity?</p> <p>13 A. I don't know.</p> <p>14 Q. Can you identify any person who sits</p> <p>15 on that board?</p> <p>16 A. No.</p> <p>17 Q. Do you know how many people sit on</p> <p>18 that board?</p> <p>19 A. No.</p> <p>20 Q. Do you have an understanding as to</p> <p>21 who makes decisions as to whether or not Gov Re</p> <p>22 should make – (audio malfunction) –</p> <p>23 (Clarification requested by the</p> <p>24 stenographer.)</p> <p>25 MR. MORRIS: Withdrawn.</p>
<p>Page 144</p> <p>1 J. DONDERO</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, do you know who makes</p> <p>4 decisions on behalf of Gov Re as to whether or</p> <p>5 not to make payments on claims?</p> <p>6 A. No.</p> <p>7 Q. Did you ever participate in any</p> <p>8 decisions concerning the payment of claims made</p> <p>9 under a Gov Re policy?</p> <p>10 A. Not in five years. I think I was</p> <p>11 more involved five years ago, but I don't</p> <p>12 remember.</p> <p>13 Q. So you don't know if you sit on the</p> <p>14 board of directors, you don't know who makes</p> <p>15 decisions to pay claims, and you can't identify</p> <p>16 any members of the board; is that right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And you don't know if you have</p> <p>19 an indirect or direct ownership interest in</p> <p>20 Gov Re; is that right?</p> <p>21 A. Correct.</p> <p>22 Q. Okay. You've spent some time over</p> <p>23 the last months trying to put together a</p> <p>24 so-called pot plan; is that right?</p> <p>25 A. Yes.</p>	<p>Page 145</p> <p>1 J. DONDERO</p> <p>2 Q. Since December 10th, 2020, have you</p> <p>3 had any communications with any employee of the</p> <p>4 debtor concerning the pot plan?</p> <p>5 A. It's been a struggle to put together</p> <p>6 a pot plan. There's been an intentional block of</p> <p>7 any information, even assets, at Highland, so any</p> <p>8 pot plan is a stab in the dark for me when I put</p> <p>9 it forward, relative to current assets and likely</p> <p>10 outcome.</p> <p>11 But developing the pot plan has been</p> <p>12 something I think that's been applauded by the</p> <p>13 judge; at different times it's been encouraged by</p> <p>14 creditors, you know. But the only people – Dave</p> <p>15 Klos has helped with creating the model so that</p> <p>16 the model makes sense and adds up and is</p> <p>17 distributable. Dave Klos has been the person</p> <p>18 that I've accessed throughout the year regarding</p> <p>19 the pot plan.</p> <p>20 Q. And is it fair to say that you've</p> <p>21 communicated with Mr. Klos about the pot plan</p> <p>22 since December 10th, 2020?</p> <p>23 A. Probably. You know, to the extent</p> <p>24 that the pot plan has come up, been considered or</p> <p>25 distributed, yes.</p>

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1 J. DONDERO

2 Q. Okay. Can you identify any other

3 employees of the debtor with whom you've

4 discussed the pot plan with since December 10th,

5 2020?

6 A. No.

7 Q. Did you discuss it with

8 Mr. Waterhouse?

9 A. Mr. Waterhouse is Klos' direct

10 supervisor. He probably had an awareness of it

11 from those conversations. I don't recall. I

12 mean, I don't – maybe – I mean, there have

13 been, maybe, peripherally, not significant, I

14 don't think, since the 16th, but I don't recall.

15 Q. Did you ever get any balance sheets

16 or financial information about MultiStrat from

17 Scott Ellington?

18 A. No.

19 Q. Did you ever get any financial

20 information, including balance sheets, concerning

21 MultiStrat, from Isaac Leventon?

22 A. No. They – I wouldn't believe that

23 those guys would have it. I wouldn't even think

24 to ask them for it. It wouldn't be – I don't

25 think it's natural for them to have it. But no,

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1 J. DONDERO

2 (Time noted: 1:57 p.m. CST)

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8 \_\_\_\_\_

9 JAMES D. DONDERO

10

11 Subscribed and sworn to before me this \_\_\_\_\_

12 day of \_\_\_\_\_, 20\_\_\_\_.

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1 J. DONDERO

2 I never did, no.

3 MR. MORRIS: Okay. I have no further

4 questions, just two points that I'd like to make.

5 John, will you agree on behalf of

6 Mr. Dondero to have him appear at Friday's

7 hearing when the preliminary injunction takes

8 place or do I need to serve a subpoena?

9 MR. BONDS: No, we haven't made that

10 decision yet.

11 MR. MORRIS: Okay. Will you accept a

12 subpoena on behalf of Mr. Dondero?

13 MR. BONDS: Sure.

14 MR. MORRIS: Okay. We'll get that

15 over to you tomorrow.

16 And then lastly, the deposition of

17 Andrew Clubok has been adjourned to a date to be

18 determined.

19 MR. BONDS: Okay.

20 MR. MORRIS: Thank you very much,

21 all.

22 MR. BONDS: Thanks.

23 THE VIDEOGRAPHER: 1:56 p.m. –

24 1:57 p.m. Central Standard Time. We're off the

25 record. This concludes the deposition.

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1

2 C E R T I F I C A T E

3

4 I, MICHAEL E. MILLER, FAPR, RDR, CRR,

5 Notary Public in and for the State of Texas, do

6 hereby certify:

7 That JAMES D. DONDERO, the witness

8 whose deposition is hereinbefore set forth, was

9 duly sworn by me and that such deposition is a

10 true record of the testimony given by such

11 witness;

12 That pursuant to FRCP Rule 30,

13 signature of the witness was not requested by the

14 witness or other party before the conclusion of

15 the deposition;

16 I further certify that I am not

17 related to any of the parties to this action by

18 blood or marriage; and that I am in no way

19 interested in the outcome of this matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand on January 5, 2021.

22

23 \_\_\_\_\_

24 MICHAEL E. MILLER, FAPR, RDR, CRR

25 NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS

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## **EXHIBIT 96**

Dondero - 5-28-2021

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

In re: )  
 )  
 6 HIGHLAND CAPITAL ) Case No.  
 MANAGEMENT, LP, ) 19-34054 L.P.  
 7 ) Chapter 11  
 Debtor, )  
 8 -----)  
 HIGHLAND CAPITAL MANAGEMENT, )  
 9 LP, )  
 )  
 10 Plaintiff, ) Adversary No.  
 ) 21-03003-sgi  
 11 vs. )  
 )  
 12 JAMES D. DONDERO, )  
 )  
 13 Defendant. )

REMOTE DEPOSITION OF

JAMES DONDERO

Pages 103 - 282

Dallas, Texas

Friday, 28th day of May, 2021

Job No. 194690

Reported by:

Daniel J. Skur, Notary Public and CSR



<p>1 Dondero - 5-28-2021</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 28th day of May, 2021</p> <p>9 9:33 a.m. - 1:59 p.m.</p> <p>10</p> <p>11</p> <p>12 Remote Deposition of JAMES DONDERO,</p> <p>13 located in Dallas, Texas, before Daniel J.</p> <p>14 Skur, Notary Public and Certified Shorthand</p> <p>15 Reporter in and for the State of Texas</p> <p>16 located in Waxahachie, Texas.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 104</p> <p>1 Dondero - 5-28-2021</p> <p>2 A P P E A R A N C E S:</p> <p>3 Pachulski Stang Ziehl &amp; Jones</p> <p>4 Attorney(s) for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, New York 10017</p> <p>7 BY: John Morris, Esq.</p> <p>8 Gregory Demo, Esq.</p> <p>9</p> <p>10 Stinson</p> <p>11 Attorney(s) for The Witness</p> <p>12 3102 Oak Lawn Avenue</p> <p>13</p> <p>14 Dallas, Texas 75219</p> <p>15</p> <p>16 BY: Deborah Deitsch-Perez</p> <p>17</p> <p>18 Michael Aigen, Esq.</p> <p>19</p> <p>20 Paul Lackey, Esq.</p> <p>21</p> <p>22 Sidley Austin</p> <p>23 Attorney(s) for The Committee</p> <p>24 2021 McKinney Avenue</p> <p>25</p> <p>26 Dallas, Texas 75201</p> <p>27</p> <p>28 BY: Paige Montgomery, Esq.</p> <p>29</p> <p>30</p> <p>31 ALSO PRESENT:</p> <p>32 Davor Rukavina, NexPoint</p> <p>33 La Asia Cauty</p> <p>34</p> <p>35</p>
<p>1 Dondero - 5-28-2021</p> <p>2</p> <p>3 IT IS HEREBY STIPULATED AND AGREED</p> <p>4 by and between the attorneys for the respective</p> <p>5 parties herein, that filing and sealing be and</p> <p>6 the same are hereby waived.</p> <p>7 IT IS FURTHER STIPULATED AND AGREED</p> <p>8 that all objections, except as to the form of</p> <p>9 the question, shall be reserved to the</p> <p>10 time of the trial.</p> <p>11 IT IS FURTHER STIPULATED AND AGREED</p> <p>12 that the within deposition may be sworn to and</p> <p>13 signed before any officer authorized to</p> <p>14 administer an oath, with the same force and</p> <p>15 effect as if signed and sworn to before the</p> <p>16 Court.</p> <p>17 - oOo -</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 106</p> <p>1 Dondero - 5-28-2021</p> <p>2 PROCEEDINGS</p> <p>3 REMOTE ORAL DEPOSITION OF</p> <p>4 JAMES DONDERO</p> <p>5 (REPORTER NOTE: This deposition is</p> <p>6 being conducted remotely in accordance with</p> <p>7 the Current Emergency Order regarding the</p> <p>8 COVID-19 State of Disaster.</p> <p>9 Today's date is the 28th day of</p> <p>10 May, 2021. The time is 9:33 a.m. Daylight</p> <p>11 Savings Time. The witness is located in</p> <p>12 Dallas, Texas.)</p> <p>13 JAMES DONDERO,</p> <p>14 having been duly cautioned and sworn to tell</p> <p>15 the truth, the whole truth and nothing but the</p> <p>16 truth, testified as follows:</p> <p>17 (9:33 A.M.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Good morning, Mr. Dondero.</p> <p>21 A. Morning.</p> <p>22 Q. It's John Morris, again, from</p> <p>23 Pachulski on behalf of the debtor. We're here</p> <p>24 for your deposition today.</p> <p>25 Do you understand that?</p>
<p>Page 107</p>	<p>Page 105</p>

<p>Page 108</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. Okay. We've done this a few times,</p> <p>4 so I'm going to kind of cut to the chase; but I</p> <p>5 do want to remind you that we're going to be</p> <p>6 looking at a number of documents today.</p> <p>7 And because of the difficulty</p> <p>8 sometimes of doing this on a Zoom or by video,</p> <p>9 if, at any time, you believe you need to see</p> <p>10 other portions of the document, please let me</p> <p>11 know that. Okay?</p> <p>12 A. Sure.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we put up the first</p> <p>15 exhibit, please?</p> <p>16 (Exhibit 1 introduced.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Okay. This is a document that's got</p> <p>19 a title, "Promissory Note." It's dated</p> <p>20 February 2, 2018, and the amount of the note is</p> <p>21 \$3,825,000.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: Can we just go to the</p> <p>25 signature line, please?</p>	<p>Page 109</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Is that your signature, sir?</p> <p>4 A. I believe that's my assistant on my</p> <p>5 behalf.</p> <p>6 Q. Did you authorize –</p> <p>7 (Audio distortion.)</p> <p>8 A. I'm sorry?</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I don't want to step on your words.</p> <p>11 Were you finished with your answer?</p> <p>12 MS. DEITSCH-PEREZ: Yeah. Can</p> <p>13 you – yeah, can you ask it again?</p> <p>14 MR. MORRIS: Sure.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Is that your signature, sir?</p> <p>17 A. Yes, for – yes.</p> <p>18 MR. MORRIS: Can we go back to the</p> <p>19 top of the document?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. And was this document signed on or</p> <p>22 around February 2, 2018?</p> <p>23 A. Yes.</p> <p>24 Q. Did you receive \$3,825,000 from the</p> <p>25 debtor on or around February 2nd, 2018?</p>
<p>Page 110</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. I – I believe so. I don't have</p> <p>3 direct awareness, but I believe so.</p> <p>4 Q. Okay. And did you sign this</p> <p>5 promissory note in exchange for that cash that</p> <p>6 you believe you received?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Are you familiar with the</p> <p>9 term "demand note"?</p> <p>10 A. Yes.</p> <p>11 Q. Can you describe for me your</p> <p>12 understanding of what a demand note is?</p> <p>13 A. It's a note that's – maturity is</p> <p>14 defined by the term "demand" versus a – a</p> <p>15 stipulated date.</p> <p>16 Q. And if we look down to paragraph 2,</p> <p>17 at the time that you signed this document on</p> <p>18 February 2, 2018, did you understand, based on</p> <p>19 paragraph 2, that you were signing a demand</p> <p>20 note, as you've characterized it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay.</p> <p>23 MR. MORRIS: Can we go back to the</p> <p>24 top of the document?</p> <p>25 BY MR. MORRIS:</p>	<p>Page 111</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Is it fair to say that under this</p> <p>3 demand note, you promised to pay Highland</p> <p>4 Capital Management, L.P., the sum of</p> <p>5 \$3,825,000?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And at the time that you</p> <p>8 signed this document on February 2nd, 2018, did</p> <p>9 you intend to repay to Highland Capital</p> <p>10 Management, L.P., \$3,825,000 plus interest?</p> <p>11 A. Yes.</p> <p>12 Q. And at the time you signed this</p> <p>13 document, did you intend to repay the principal</p> <p>14 amount plus interest upon demand by HCMLP?</p> <p>15 A. Whatever was appropriate to pay,</p> <p>16 what hadn't been paid if it – if it had –</p> <p>17 yeah, if it had – whatever the terms are, the</p> <p>18 terms are.</p> <p>19 Q. Okay. Did you read the promissory</p> <p>20 note before you signed it?</p> <p>21 A. No.</p> <p>22 Q. Is there anything about the</p> <p>23 promissory note today that you don't</p> <p>24 understand?</p> <p>25 A. I haven't looked at it closely. I'm</p>

<p>Page 112</p> <p>1 Dondero - 5-28-2021</p> <p>2 aware of it but – you know, but I'm not aware.</p> <p>3 I haven't looked at it closely.</p> <p>4 Q. Well, but you do know that the</p> <p>5 debtor has sued you to collect on this note,</p> <p>6 right?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And can you identify anything</p> <p>9 in this note today that you don't understand?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. Again, I don't want to make any</p> <p>13 legal interpretation or analysis of the</p> <p>14 contract.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. And I appreciate that.</p> <p>17 And to be clear, I'm not asking you</p> <p>18 for any legal opinion or any legal analysis.</p> <p>19 I'm asking for facts.</p> <p>20 As a factual matter, as a layperson,</p> <p>21 is there anything about this note today that</p> <p>22 you do not understand?</p> <p>23 MS. DEITSCH-PEREZ: Object, no</p> <p>24 foundation.</p> <p>25 A. And I can't say.</p>	<p>Page 113</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. You're not aware of anything;</p> <p>4 is that fair?</p> <p>5 MS. DEITSCH-PEREZ: Object, no</p> <p>6 foundation.</p> <p>7 A. No. I'm saying I can't give an</p> <p>8 opinion.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. All right. I'll try one more time a</p> <p>11 slightly different way.</p> <p>12 Can you identify any language in</p> <p>13 this promissory note that you, as the maker of</p> <p>14 the note and as a layperson, as a matter of</p> <p>15 fact, do not understand?</p> <p>16 MS. DEITSCH-PEREZ: Objection, no</p> <p>17 foundation.</p> <p>18 A. I – I don't have – I haven't</p> <p>19 reviewed it. I don't have a comment.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. At the time that you signed this,</p> <p>22 did you believe that this note reflected all of</p> <p>23 the terms and conditions with respect to the</p> <p>24 subject matter of the note?</p> <p>25 MS. DEITSCH-PEREZ: Object, no</p>
<p>Page 114</p> <p>1 Dondero - 5-28-2021</p> <p>2 foundation.</p> <p>3 A. Yeah, I believe largely at the time,</p> <p>4 yes.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. In fact, if we go to paragraph 8,</p> <p>7 there's – the last sentence is what's commonly</p> <p>8 referred to as an integration clause.</p> <p>9 Do you see that last sentence of</p> <p>10 paragraph 8?</p> <p>11 A. Yes.</p> <p>12 Q. And did you agree with the debtor</p> <p>13 that the terms and provisions of the paragraph</p> <p>14 control and supersede every other provision of</p> <p>15 all other agreements between the payee and the</p> <p>16 maker in conflict herewith?</p> <p>17 A. I see it. I mean, I read it. But</p> <p>18 what's – what's the question?</p> <p>19 Q. Withdrawn. It's okay. It speaks</p> <p>20 for itself.</p> <p>21 You were the CEO of Highland at the</p> <p>22 time that you signed the note, correct?</p> <p>23 A. Yes.</p> <p>24 Q. And you controlled Highland at that</p> <p>25 time; is that fair?</p>	<p>Page 115</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. And at the time that you signed the</p> <p>4 note, the Redeemer Committee had not yet</p> <p>5 obtained a judgment against Highland Capital</p> <p>6 Management or anybody else; is that – any</p> <p>7 other Highland entity; is that right?</p> <p>8 A. I – and I don't recall the – the</p> <p>9 timing –</p> <p>10 Q. Okay.</p> <p>11 A. – of their arbitration award or...</p> <p>12 Q. Let me ask you to just go back in</p> <p>13 time, February of 2018. Do you recall having</p> <p>14 any concern in February 2018 that you might</p> <p>15 lose control of Highland?</p> <p>16 A. No, I don't recall.</p> <p>17 Q. While you were the CEO, did</p> <p>18 Highland – withdrawn.</p> <p>19 I'm going to refer to Highland</p> <p>20 Capital Management, L.P., variously today as</p> <p>21 either the debtor, Highland, or HCMLP; is that</p> <p>22 fair?</p> <p>23 MS. DEITSCH-PEREZ: John, I think</p> <p>24 it's a little confusing if you do that. I</p> <p>25 mean, if you could refer to the</p>

<p>Page 116</p> <p>1 Dondero - 5-28-2021</p> <p>2 post-bankruptcy entity as "the debtor" and,</p> <p>3 when you're talking about prebankruptcy,</p> <p>4 call it "Highland" or "HCM"?</p> <p>5 MR. MORRIS: Okay.</p> <p>6 MS. DEITSCH-PEREZ: I – I think</p> <p>7 that would probably be clearer.</p> <p>8 MR. MORRIS: That's fair. I'll try</p> <p>9 and do just that. Thank you very much.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. While you were the CEO of HCMLP, did</p> <p>12 HCMLP, prepare, in the ordinary course of</p> <p>13 business, a document called a "Monthly</p> <p>14 Reporting Package"?</p> <p>15 A. I don't know – I don't know the</p> <p>16 name – I don't know that name in particular,</p> <p>17 but we did do monthly financials, I believe.</p> <p>18 Q. Okay. And did you personally review</p> <p>19 the monthly financials each month that they</p> <p>20 were prepared?</p> <p>21 A. No.</p> <p>22 Q. Do you know who was responsible for</p> <p>23 preparing the monthly financials?</p> <p>24 A. It would have been in accounting. I</p> <p>25 don't know who in accounting.</p>	<p>Page 117</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Was Frank Waterhouse responsible for</p> <p>3 preparing the Monthly Operating Reports?</p> <p>4 A. He was our CFO. So everything,</p> <p>5 ultimately, in accounting reported up through</p> <p>6 him, but I don't know his involvement in that</p> <p>7 report.</p> <p>8 Q. Can you identify any person who was</p> <p>9 responsible for preparing the Monthly Operating</p> <p>10 Reports for HCMLP, while you were the CEO?</p> <p>11 A. No.</p> <p>12 Q. Do you know what the Monthly</p> <p>13 Operating Reports were used for?</p> <p>14 Withdrawn.</p> <p>15 What was the purpose of preparing</p> <p>16 Monthly Operating Reports, if you know?</p> <p>17 A. I don't know.</p> <p>18 Q. Were they delivered to you each</p> <p>19 month, even if you didn't read them?</p> <p>20 A. I don't believe so. Not physically,</p> <p>21 that I can remember. If there was an email, I</p> <p>22 don't remember.</p> <p>23 Q. Did you ever discuss any of the</p> <p>24 Monthly Operating Reports with Mr. Waterhouse?</p> <p>25 A. I can't – I can't recall.</p>
<p>Page 118</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: I mean, do you</p> <p>3 mean the report specifically or Highland's</p> <p>4 financials generally?</p> <p>5 MR. MORRIS: The Monthly Operating</p> <p>6 Reports that we're talking about.</p> <p>7 And I would appreciate it, Deborah,</p> <p>8 if you have an objection, just say "Object</p> <p>9 to the form of the question"; and I'll do</p> <p>10 the best I can to – to try to understand</p> <p>11 what you're saying, but I'd prefer no</p> <p>12 speaking objections.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Do you recall ever speaking with</p> <p>15 anybody in accounting with respect to any</p> <p>16 Monthly Operating Report that they prepared?</p> <p>17 A. I don't recall.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we put up Exhibit</p> <p>20 Number 2, please?</p> <p>21 (Exhibit 2 introduced.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Looking at the first page, sir, does</p> <p>24 this appear to be what we've been describing as</p> <p>25 a Monthly Operating Report for Highland Capital</p>	<p>Page 119</p> <p>1 Dondero - 5-28-2021</p> <p>2 Management?</p> <p>3 A. It says "Operating Results." I – I</p> <p>4 have no recollection of seeing this cover sheet</p> <p>5 before.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Can we go to the second</p> <p>8 page, please?</p> <p>9 Stop right there.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. This is the second page of the</p> <p>12 Operating Results for February 2018, and it's</p> <p>13 headed "Significant Items Impacting HCMLP's</p> <p>14 Balance Sheet."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know whether the accounting</p> <p>18 department was charged with the responsibility</p> <p>19 of identifying on a monthly basis significant</p> <p>20 items that would impact Highland's balance</p> <p>21 sheet?</p> <p>22 A. I have no particular awareness.</p> <p>23 Q. Okay. Do you see at the bottom</p> <p>24 under the title "Other," it's \$3.8 million and</p> <p>25 it's referred to as "Partner Loan"?</p>

<p>Page 120</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. Do you have an understanding that</p> <p>4 that 3.8 million-dollar partner loan refers to</p> <p>5 what we just looked at as Exhibit 1, the</p> <p>6 promissory note?</p> <p>7 MS. DEITSCH-PEREZ: Object, no</p> <p>8 foundation.</p> <p>9 A. I have – I have no particular</p> <p>10 awareness other than the amounts are similar.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. And – and do you know whether</p> <p>13 Highland recorded the promissory note as an</p> <p>14 asset on its balance sheet as of February 2018?</p> <p>15 A. I – I don't know.</p> <p>16 Q. So, you signed a promissory note for</p> <p>17 \$3.8 million in February 2018; and as the CEO,</p> <p>18 you don't know if Highland carried that</p> <p>19 promissory note on its balance sheet. Do I</p> <p>20 have that right?</p> <p>21 A. I'm saying I don't have particular</p> <p>22 knowledge. I – I am a CPA and GAAP accounting</p> <p>23 would suggest that it was, but I don't have –</p> <p>24 I don't have particular knowledge on how it was</p> <p>25 accounted for.</p>	<p>Page 121</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Okay. Later in the year, you signed</p> <p>3 two more promissory notes in favor of Highland;</p> <p>4 is that right?</p> <p>5 A. I – I believe so. Yeah.</p> <p>6 MR. MORRIS: Can you put up</p> <p>7 Exhibit 3, please?</p> <p>8 (Exhibit 3 introduced.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. And can we go to the signature line?</p> <p>11 (Scrolling.)</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Is that your signature, sir?</p> <p>14 A. Yes.</p> <p>15 MR. MORRIS: Go to the top of the</p> <p>16 page.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Did you sign a promissory note on or</p> <p>19 about August 1st, 2018, in the amount of</p> <p>20 \$2.5 million in favor of Highland?</p> <p>21 A. Yes.</p> <p>22 Q. Did you receive from Highland</p> <p>23 Capital Management, L.P., \$2.5 million on or</p> <p>24 about August 1st, 2018?</p> <p>25 A. I believe so.</p>
<p>Page 122</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. And did you, in fact, sign this</p> <p>3 promissory note in exchange for that</p> <p>4 \$2.5 million?</p> <p>5 A. Yes.</p> <p>6 MR. MORRIS: Can we go down to</p> <p>7 paragraph 2, please?</p> <p>8 (Scrolling.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Looking at paragraph 2, would you</p> <p>11 characterize this as a demand note, using the</p> <p>12 understanding that you described earlier today?</p> <p>13 A. Yes.</p> <p>14 Q. And – and this note, like the</p> <p>15 other, because they're demand notes, there's no</p> <p>16 conditions for – for the demand, is that</p> <p>17 right, at least as drafted.</p> <p>18 Withdrawn. That wasn't a great</p> <p>19 question.</p> <p>20 Were these unconditional demand</p> <p>21 notes, these two documents that we've</p> <p>22 looked at?</p> <p>23 A. I – I don't want to make a legal</p> <p>24 interpretation.</p> <p>25 Q. I'm just asking for your</p>	<p>Page 123</p> <p>1 Dondero - 5-28-2021</p> <p>2 understanding as the person who signed the</p> <p>3 note. At the time you signed it, at that time,</p> <p>4 did you understand that there were any</p> <p>5 conditions placed on Highland's ability to make</p> <p>6 a demand?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. Did you understand that under</p> <p>9 these demand notes, that if you defaulted, all</p> <p>10 amounts that were due and payable would</p> <p>11 accelerate?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you read this – did you read</p> <p>17 this promissory note before you signed it?</p> <p>18 A. No.</p> <p>19 Q. Do you know whose idea it was to</p> <p>20 give you the principal amount of these notes</p> <p>21 and for you to execute the promissory notes in</p> <p>22 exchange?</p> <p>23 A. I – again, I think it's proper</p> <p>24 accounting consistent with what we've done</p> <p>25 with – we've done historically – or Highland</p>

<p>Page 124</p> <p>1 Dondero - 5-28-2021</p> <p>2 did historically and what Highland did</p> <p>3 historically for other employees.</p> <p>4 Q. Okay. I'm not asking about that.</p> <p>5 I'm asking just about you and the two notes</p> <p>6 that we've looked at so far. Who made the</p> <p>7 decision at the respective moments in time to</p> <p>8 transfer to you the principal amount of the</p> <p>9 notes and for you to execute the notes?</p> <p>10 A. I believe it would have come from</p> <p>11 accounting.</p> <p>12 Q. Who decided – who decided the</p> <p>13 principal amount of the note?</p> <p>14 A. I don't know. It would – I don't</p> <p>15 know.</p> <p>16 Q. Did you ask to borrow money?</p> <p>17 Did you ask the folks in accounting</p> <p>18 for a loan from Highland in the principal</p> <p>19 amount of the notes and request that they</p> <p>20 document it accordingly?</p> <p>21 A. No.</p> <p>22 Q. Who was your assistant at this time?</p> <p>23 A. My accounting assistant at this time</p> <p>24 was Melissa Schroth.</p> <p>25 Q. And was she authorized to sign these</p>	<p>Page 125</p> <p>1 Dondero - 5-28-2021</p> <p>2 notes on your behalf?</p> <p>3 A. I – that – sometimes she signs</p> <p>4 stuff. I don't know on this. I'm – I'm not</p> <p>5 denying that it's a bona fide – signed by me.</p> <p>6 Or if it wasn't signed by me, it was –</p> <p>7 somebody who was authorized signed it on my</p> <p>8 behalf.</p> <p>9 Q. Okay. I appreciate that. Thank</p> <p>10 you.</p> <p>11 Is there anything about –</p> <p>12 withdrawn.</p> <p>13 Was there anything about this</p> <p>14 promissory note that you didn't understand at</p> <p>15 the time that either you signed it or it was</p> <p>16 signed on your behalf?</p> <p>17 MS. DEITSCH-PEREZ: Object, no</p> <p>18 foundation.</p> <p>19 A. Again, I didn't evaluate it</p> <p>20 carefully, and I didn't actually even read it.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Okay. As you sit here today, can</p> <p>23 you identify anything in this document that you</p> <p>24 do not understand?</p> <p>25 MS. DEITSCH-PEREZ: Object, no</p>
<p>Page 126</p> <p>1 Dondero - 5-28-2021</p> <p>2 foundation.</p> <p>3 A. I – I don't want to make a legal</p> <p>4 interpretation on a legal document.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. I appreciate that, but I have no</p> <p>7 ability to ask any follow-up questions. So let</p> <p>8 me ask it just a different way: Is there</p> <p>9 anything about this document that you don't</p> <p>10 understand today?</p> <p>11 MS. DEITSCH-PEREZ: Object, no</p> <p>12 foundation.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. You can answer.</p> <p>15 A. I don't know.</p> <p>16 Q. Okay. Do you understand that if</p> <p>17 there was something that – that you did not</p> <p>18 understand, you have an obligation to tell me</p> <p>19 that right now?</p> <p>20 MS. DEITSCH-PEREZ: Object, no</p> <p>21 foundation.</p> <p>22 A. I – I – the answer is the same. I</p> <p>23 don't know.</p> <p>24 MR. MORRIS: Can we go to Exhibit</p> <p>25 Number 4, please?</p>	<p>Page 127</p> <p>1 Dondero - 5-28-2021</p> <p>2 (Exhibit 4 introduced.)</p> <p>3 MR. MORRIS: Can we go to the</p> <p>4 signature line when you get there?</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Is that your signature, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And did you sign this document or –</p> <p>9 or – let me ask two questions first. Did you</p> <p>10 personally sign this document?</p> <p>11 A. And again, it was either me or</p> <p>12 someone with my approval, but that doesn't look</p> <p>13 like my typical signature, but it's close.</p> <p>14 Q. Okay. And whoever signed it had the</p> <p>15 authority from you to sign on your behalf; is</p> <p>16 that fair?</p> <p>17 A. Yes.</p> <p>18 Q. Okay.</p> <p>19 MR. MORRIS: Can we go to the top of</p> <p>20 the page, please?</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. And did you or somebody acting on</p> <p>23 your behalf sign this promissory note on</p> <p>24 August 13, 2018, in the amount of \$2.5 million?</p> <p>25 A. Yes.</p>



<p>Page 128</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: Can we go to</p> <p>3 paragraph 2, please?</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Looking at paragraph 2 and the term</p> <p>6 contained therein, would you agree that this is</p> <p>7 a demand note, using the definition that you</p> <p>8 supplied earlier today?</p> <p>9 A. Yes.</p> <p>10 Q. At the time that this note was</p> <p>11 signed on your behalf, did you intend to comply</p> <p>12 with the terms of this note?</p> <p>13 A. Yes.</p> <p>14 Q. At the time that this note was</p> <p>15 signed on your behalf, did you intend to pay</p> <p>16 all unpaid principal and accrued, but unpaid,</p> <p>17 interest upon demand of the payee?</p> <p>18 A. Let me say I – I expected to honor</p> <p>19 the agreement. I don't know if I can answer</p> <p>20 that with regard to that one term.</p> <p>21 Q. Well, I do just want to make sure</p> <p>22 that – withdrawn.</p> <p>23 You understood at the time you</p> <p>24 signed this document, or it was signed on your</p> <p>25 behalf, that it was a demand note, correct?</p>	<p>Page 129</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. That it was structured – no. I</p> <p>3 think what I've testified or tried to testify</p> <p>4 to is that they are demand notes or they're</p> <p>5 written as demand notes. I didn't read them or</p> <p>6 pay attention at the time to the structure of</p> <p>7 the note.</p> <p>8 Q. Okay. And as demand notes, you</p> <p>9 understood that any unpaid principal and</p> <p>10 interest would be due upon demand, correct?</p> <p>11 A. Again, I don't want to make – I</p> <p>12 don't want to make – I don't want to affirm</p> <p>13 that statement. I would say I don't know</p> <p>14 because I don't want to – I don't know the</p> <p>15 rest of the context of the rest of the note and</p> <p>16 how it all interplays.</p> <p>17 Q. All right. Well, I'm happy to –</p> <p>18 to – it's a very short document, so we can</p> <p>19 look at it for as long as you want, but I</p> <p>20 really need to know what – what you, as the</p> <p>21 maker, understood when you signed the note. So</p> <p>22 I'm going to ask a very simple question, and I</p> <p>23 encourage you to – to ask to see whatever</p> <p>24 portions of the document you want, okay?</p> <p>25 When these three notes were signed</p>
<p>Page 130</p> <p>1 Dondero - 5-28-2021</p> <p>2 by you or signed by someone you authorized to</p> <p>3 sign, what did you understand the payment terms</p> <p>4 to be?</p> <p>5 A. I – I didn't. I didn't have an</p> <p>6 understanding at the time.</p> <p>7 Q. So – but – but you would agree</p> <p>8 that your intention was to comply with the</p> <p>9 terms of the note; is that fair?</p> <p>10 A. In aggregate, yes.</p> <p>11 Q. Okay.</p> <p>12 MR. MORRIS: Go to Exhibit 5,</p> <p>13 please.</p> <p>14 (Exhibit 5 introduced.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Is it your practice to sign</p> <p>17 documents or to have people sign documents on</p> <p>18 your behalf that you haven't read?</p> <p>19 A. Yes.</p> <p>20 Q. This is a document that's entitled</p> <p>21 "Operating Results" for August 2018. Do you</p> <p>22 see that?</p> <p>23 A. Yes.</p> <p>24 MR. MORRIS: And if we could just go</p> <p>25 to the second page.</p>	<p>Page 131</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Do you see under Significant Items</p> <p>4 Impacting Highland's bank – balance sheet for</p> <p>5 August 2018 at the bottom, there's a reference</p> <p>6 to \$5 million in "partner loan." Do you see</p> <p>7 that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have an understanding as to</p> <p>10 whether or not that refers to the two</p> <p>11 2.5 million-dollar notes that we just looked at</p> <p>12 that were signed in August 2018?</p> <p>13 A. I don't know.</p> <p>14 Q. Do you have any recollection at</p> <p>15 all or – withdrawn.</p> <p>16 Were you personally referred to as a</p> <p>17 partner of Highland in August 2018?</p> <p>18 A. I believe so.</p> <p>19 Q. Are you aware of any partner loans</p> <p>20 that were made by Highland in August 2018 other</p> <p>21 than the two loans that we just looked at?</p> <p>22 A. I don't know.</p> <p>23 Q. You're not aware of any; is that</p> <p>24 fair?</p> <p>25 MS. DEITSCH-PEREZ: Object, no</p>

<p>Page 132</p> <p>1 Dondero - 5-28-2021</p> <p>2 foundation.</p> <p>3 A. I don't know.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. There came a time when the debtor</p> <p>6 made demand on these three notes, right?</p> <p>7 A. I don't know. I believe – I don't</p> <p>8 know specifically, but I believe so.</p> <p>9 MR. MORRIS: Can we put up</p> <p>10 Exhibit 6, please?</p> <p>11 (Exhibit 6 introduced.)</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Do you see this is a – it's a</p> <p>14 letter dated December 3rd, and it's addressed</p> <p>15 to you.</p> <p>16 And if we scroll down a little bit,</p> <p>17 it's signed by Mr. Seery as the CEO and CRO of</p> <p>18 Highland Capital Management.</p> <p>19 Do you see that?</p> <p>20 A. Yes.</p> <p>21 Q. Do you recall on or around</p> <p>22 December 3rd, 2020, the debtor made a demand</p> <p>23 for all outstanding principal and interest due</p> <p>24 under the three notes that we just looked at?</p> <p>25 A. I – I see the letter. I don't have</p>	<p>Page 133</p> <p>1 Dondero - 5-28-2021</p> <p>2 a recollection.</p> <p>3 Q. All right. Do you understand that</p> <p>4 in December 2020, the debtor made a demand for</p> <p>5 payment of all unpaid principal and interest</p> <p>6 under the three notes that we just looked at,</p> <p>7 even if you don't remember this particular</p> <p>8 letter?</p> <p>9 A. I'm sorry. What was – yeah, I</p> <p>10 accept the letter, and I'll accept that it was</p> <p>11 delivered.</p> <p>12 What – what's your question,</p> <p>13 please?</p> <p>14 Q. I'm trying to just get – get your</p> <p>15 understanding.</p> <p>16 And I think you testified that you</p> <p>17 don't recall seeing this letter. Do I have</p> <p>18 that right?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. So, putting the letter to the</p> <p>21 side, did you become aware in December 2020</p> <p>22 that the debtor had demanded that you pay all</p> <p>23 unpaid principal and interest due under the</p> <p>24 three promissory notes that we just looked at?</p> <p>25 A. Again, just generally.</p>
<p>Page 134</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Did you make any payment to the</p> <p>3 debtor in response to that demand?</p> <p>4 A. No.</p> <p>5 Q. Did you or anybody acting on your</p> <p>6 behalf respond to the debtor's demand in any</p> <p>7 way?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Withdrawn. That's fair.</p> <p>12 Let me ask a different question.</p> <p>13 Did you or anybody acting on your</p> <p>14 behalf respond to the debtor's demand at any</p> <p>15 time prior to the commencement of this</p> <p>16 adversary proceeding?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. Can you repeat it one more time?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Sure. Did you or anybody acting on</p> <p>22 your behalf respond to the debtor's demand for</p> <p>23 payment of all unpaid principal and interest at</p> <p>24 any time prior to the commencement of this</p> <p>25 lawsuit?</p>	<p>Page 135</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. I want – I want to answer that</p> <p>5 question as – as follows: I'm not saying on</p> <p>6 my behalf, but I know there was a lot of</p> <p>7 conversations with lawyers and business people</p> <p>8 around the notes and their shared services and</p> <p>9 the split and the overpayments to Highland and</p> <p>10 – trying to reach some amicable resolution of</p> <p>11 shared services – in fact, the entire</p> <p>12 estate – but I don't – I don't – I don't</p> <p>13 recall specifically or – what lawyers or what</p> <p>14 business people were saying what to the debtor,</p> <p>15 but I – I know there were a lot of</p> <p>16 conversations that were going on.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Can you identify any aspect of any</p> <p>19 of the conversations you just described that</p> <p>20 pertained to the debtor's demand for payment of</p> <p>21 all unpaid principal and interest on the three</p> <p>22 notes?</p> <p>23 A. Not – not specifically.</p> <p>24 Q. Okay. There came a time when an</p> <p>25 answer to the debtor's complaint was filed on</p>

<p>Page 136</p> <p>1 Dondero - 5-28-2021</p> <p>2 your behalf.</p> <p>3 Do you remember that?</p> <p>4 A. No, but I'm willing to be refreshed.</p> <p>5 Q. Okay.</p> <p>6 MR. MORRIS: Can we please put up</p> <p>7 Exhibit 7?</p> <p>8 (Exhibit 7 introduced.)</p> <p>9 MR. MORRIS: And if we could just</p> <p>10 scroll down to the title.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Do you see that this document is</p> <p>13 called "Defendant James Dondero's Original</p> <p>14 Answer"?</p> <p>15 A. Yes.</p> <p>16 Q. And if we scroll back to the top of</p> <p>17 the document, do you see that it was filed on</p> <p>18 the docket on March 16, 2021?</p> <p>19 A. Yes.</p> <p>20 Q. Did you personally read this</p> <p>21 document before it was filed?</p> <p>22 A. No.</p> <p>23 Q. Did you have an understanding as to</p> <p>24 the contents of the document before it was</p> <p>25 filed?</p>	<p>Page 137</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. No.</p> <p>3 Q. Did you authorize Bonds Ellis to</p> <p>4 file this document on your behalf?</p> <p>5 A. Not specifically that I remember.</p> <p>6 Q. Did you know on or around March 16,</p> <p>7 2021, that Bonds Ellis had filed "Defendant</p> <p>8 James Dondero's Original Answer" in this</p> <p>9 adversary proceeding?</p> <p>10 A. Not specifically. There's a lot</p> <p>11 going on.</p> <p>12 Q. As you sit here right now--and,</p> <p>13 again, happy to page through the document--can</p> <p>14 you tell me whether you have ever read</p> <p>15 Defendant James Dondero's Original Answer?</p> <p>16 A. Not that I recall.</p> <p>17 Q. So, as of -- and that's true as of</p> <p>18 today; is that fair?</p> <p>19 A. Can we scroll through this, please?</p> <p>20 Q. Yes. Just let us know if you want</p> <p>21 us to slow down or speed up.</p> <p>22 MS. DEITSCH-PEREZ: Yeah, just go</p> <p>23 slow enough so he could sort of eyeball</p> <p>24 each page.</p> <p>25 MR. MORRIS: You bet.</p>
<p>Page 138</p> <p>1 Dondero - 5-28-2021</p> <p>2 THE WITNESS: Yep, keep going.</p> <p>3 (Scrolling.)</p> <p>4 THE WITNESS: Hold on. Could you go</p> <p>5 back a little bit, please? It just goes --</p> <p>6 stop right there.</p> <p>7 A. I do remember paragraph 5. I think</p> <p>8 that was recently tried last week or so, but I</p> <p>9 think that was always the -- always the way it</p> <p>10 was described to me by lawyers, was that these</p> <p>11 notes shouldn't be in her Court.</p> <p>12 MS. DEITSCH-PEREZ: Okay. And I'll</p> <p>13 just -- I'll just caution the witness to</p> <p>14 not disclose communications with counsel,</p> <p>15 but it's okay if something catches your eye</p> <p>16 and you, at least, remember that part, say,</p> <p>17 "Oh, yeah, I remember that one," but</p> <p>18 without going into details as to any</p> <p>19 communications with your lawyers.</p> <p>20 MR. MORRIS: And -- and that's fine.</p> <p>21 That's fine. I'm certainly not looking for</p> <p>22 that.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. The question is really simple: Have</p> <p>25 you ever seen this document before and --</p>	<p>Page 139</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: John, I think he</p> <p>3 said he needs to scroll through it to see</p> <p>4 if anything --</p> <p>5 MR. MORRIS: I understand.</p> <p>6 MS. DEITSCH-PEREZ: -- triggers a</p> <p>7 recollection. He just said he's looking at</p> <p>8 5, yeah, that looks familiar. If you want</p> <p>9 to keep going, we could find out if there</p> <p>10 are any others that -- that look familiar</p> <p>11 to him.</p> <p>12 THE WITNESS: Let's keep going.</p> <p>13 (Scrolling.)</p> <p>14 MS. DEITSCH-PEREZ: You'll agree</p> <p>15 that most answers are not particularly</p> <p>16 memorable when they say things like --</p> <p>17 (Simultaneous conversation.)</p> <p>18 MR. MORRIS: Please stop. Please</p> <p>19 stop. Please stop talking. Please stop</p> <p>20 talking. It's inappropriate.</p> <p>21 MS. DEITSCH-PEREZ: I -- I know.</p> <p>22 It's your deposition, and you could do all</p> <p>23 this stuff, but --</p> <p>24 (Simultaneous conversation.)</p> <p>25 MR. MORRIS: Please stop talking.</p>

<p>Page 140</p> <p>1 Dondero - 5-28-2021</p> <p>2 Please stop talking.</p> <p>3 MS. DEITSCH-PEREZ: I hear you.</p> <p>4 THE WITNESS: Keep -- keep going.</p> <p>5 (Scrolling.)</p> <p>6 THE WITNESS: Okay. Keep going.</p> <p>7 (Scrolling.)</p> <p>8 THE WITNESS: It looks to me like --</p> <p>9 MS. DEITSCH-PEREZ: Keep -- let --</p> <p>10 let him go through the whole thing.</p> <p>11 THE WITNESS: Sure. Keep going.</p> <p>12 (Scrolling.)</p> <p>13 THE WITNESS: Okay. Is that it?</p> <p>14 MR. MORRIS: Yes.</p> <p>15 THE WITNESS: Okay.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Do you recall ever seeing this</p> <p>18 document before, sir?</p> <p>19 A. The -- the substance of it, again,</p> <p>20 some of it I -- I remember, and the -- there --</p> <p>21 it strikes me as a legal argument and defenses</p> <p>22 regarding the payment of the notes, and I do</p> <p>23 remember a lot of conversation regarding it</p> <p>24 being -- it should be outside -- it should be</p> <p>25 in a different court, and it should be a jury</p>	<p>Page 141</p> <p>1 Dondero - 5-28-2021</p> <p>2 trial. And those are two main points in here,</p> <p>3 but it seems like there are a bunch of other</p> <p>4 defenses listed.</p> <p>5 Q. Okay.</p> <p>6 A. And I have -- and I have an</p> <p>7 awareness of it, but I'm not a lawyer.</p> <p>8 Q. I appreciate that you're not a</p> <p>9 lawyer; but looking at the document, does that</p> <p>10 refresh your recollection that you read and</p> <p>11 reviewed this document before it was filed on</p> <p>12 your behalf?</p> <p>13 A. I have -- I have an awareness of it,</p> <p>14 but I wouldn't -- I wouldn't have been deeply</p> <p>15 involved in its drafting or detailed approval.</p> <p>16 MR. MORRIS: Can we go to page 6 of</p> <p>17 8, please?</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. And directing your attention to</p> <p>20 paragraph 40, do you see it says, as the first</p> <p>21 affirmative defense, quote, "Defendant asserts</p> <p>22 that plaintiff's claims should be barred</p> <p>23 because it was previously agreed by plaintiff</p> <p>24 that plaintiff would not collect on the notes."</p> <p>25 Do you see that?</p>
<p>Page 142</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Have I read that accurately?</p> <p>4 A. Yes.</p> <p>5 Q. Did the plaintiff ever agree that</p> <p>6 plaintiff would not collect on the notes?</p> <p>7 A. Yes.</p> <p>8 Q. You subsequently amended this</p> <p>9 defense; isn't that right?</p> <p>10 A. I believe so.</p> <p>11 Q. And do you understand that you</p> <p>12 amended it to add a few words relating to</p> <p>13 conditions subsequent?</p> <p>14 A. I -- I -- other than for</p> <p>15 clarification and completeness, the -- it was</p> <p>16 amended. I don't have specific knowledge of</p> <p>17 what was amended.</p> <p>18 Q. Okay. When did the plaintiff agree</p> <p>19 that the plaintiff would not collect on the</p> <p>20 notes?</p> <p>21 A. Boy, that was early on in the case.</p> <p>22 Every proposal, every POT plan, every</p> <p>23 settlement discussion never included value for</p> <p>24 notes.</p> <p>25 Q. All right. I'm going to ask the</p>	<p>Page 143</p> <p>1 Dondero - 5-28-2021</p> <p>2 question again: When did the plaintiff agree</p> <p>3 that it would not collect on the notes?</p> <p>4 MS. DEITSCH-PEREZ: Are you talking</p> <p>5 about the subsequent agreements in the next</p> <p>6 pleading?</p> <p>7 MR. MORRIS: I'm asking for an</p> <p>8 answer as to when the agreement referred to</p> <p>9 in paragraph 40 was entered into.</p> <p>10 A. First quarter of -- first quarter of</p> <p>11 2020.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. So it was after the petition date?</p> <p>14 MS. DEITSCH-PEREZ: Are you asking</p> <p>15 about the 2018 notes?</p> <p>16 MR. MORRIS: Yes, those are defined</p> <p>17 to be "the notes."</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So -- so did -- this is your</p> <p>20 defense.</p> <p>21 Is it your position, Mr. Dondero,</p> <p>22 that in the first quarter of 2020, the</p> <p>23 plaintiff agreed that it would not collect on</p> <p>24 the notes?</p> <p>25 A. I -- I -- I don't -- I want to leave</p>

<p>Page 144</p> <p>1 Dondero - 5-28-2021</p> <p>2 my testimony as what I just said a minute ago.</p> <p>3 The notes were never part of any POT plan or</p> <p>4 suggested POT plan or suggested grand bargain</p> <p>5 or suggested as having any value starting in</p> <p>6 the first quarter of '20 – or most of the</p> <p>7 year, I believe, until the – towards the end</p> <p>8 of the year.</p> <p>9 Q. All right. Was there ever an</p> <p>10 agreement between you and the plaintiff that</p> <p>11 the plaintiff would not collect on the notes if</p> <p>12 there was no grand bargain or no POT plan?</p> <p>13 A. Yeah, the – I'm sorry. Repeat</p> <p>14 again.</p> <p>15 Q. Who entered the agreement on behalf</p> <p>16 of the debtor that the plaintiff would not</p> <p>17 collect on the notes?</p> <p>18 A. (Indiscernible speech.)</p> <p>19 Agreement on – you know, the –</p> <p>20 the – you know the – I think I'm looking at</p> <p>21 this question from a perspective of the</p> <p>22 negotiation, you know, at that time and not</p> <p>23 including the subsequent conditions that were</p> <p>24 overlaid on the notes, I guess. So I guess</p> <p>25 it's a combination of both.</p>	<p>Page 145</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. I'm asking you to identify the</p> <p>3 person who acted on behalf of the debtor in</p> <p>4 reaching the agreement with you that the</p> <p>5 plaintiff would not collect on the notes. Who</p> <p>6 did that?</p> <p>7 MS. DEITSCH-PEREZ: John, I think</p> <p>8 the problem is you're referring to the</p> <p>9 debtor, so he's looking at post-bankruptcy.</p> <p>10 You might ask it two questions, one –</p> <p>11 MR. MORRIS: No. Please stop.</p> <p>12 Please stop. Please stop.</p> <p>13 (Simultaneous conversation.)</p> <p>14 MS. DEITSCH-PEREZ: You agreed to</p> <p>15 that condition. You agreed to distinguish</p> <p>16 between the debtor –</p> <p>17 (Simultaneous conversation.)</p> <p>18 MR. MORRIS: Deborah –</p> <p>19 MS. DEITSCH-PEREZ: – bankruptcy –</p> <p>20 MR. MORRIS: Deborah –</p> <p>21 (Simultaneous conversation.)</p> <p>22 THE REPORTER: I can't – I can't</p> <p>23 write two people at the same time.</p> <p>24 MR. MORRIS: This is so improper.</p> <p>25 He has –</p>
<p>Page 146</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: It is not. You</p> <p>3 agreed –</p> <p>4 MR. MORRIS: Please let me finish.</p> <p>5 Please let me finish.</p> <p>6 He has described the conversations</p> <p>7 as taking place in 2020. I should be</p> <p>8 referring to the debtor. He is</p> <p>9 describing –</p> <p>10 MS. DEITSCH-PEREZ: Right.</p> <p>11 MR. MORRIS: – the context –</p> <p>12 MS. DEITSCH-PEREZ: But if you want</p> <p>13 to know about something that happened</p> <p>14 before bankruptcy, ask about Highland.</p> <p>15 MR. MORRIS: But I'm not. I</p> <p>16 don't – please stop interrupting.</p> <p>17 MS. DEITSCH-PEREZ: It's your</p> <p>18 deposition. If you want a muddy record, be</p> <p>19 my guest.</p> <p>20 MR. MORRIS: I would really</p> <p>21 appreciate it. I think I know what I'm</p> <p>22 doing.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Mr. Dondero, who, on behalf of the</p> <p>25 debtor, during these conversations about a</p>	<p>Page 147</p> <p>1 Dondero - 5-28-2021</p> <p>2 grand bargain and a POT plan told you or</p> <p>3 entered into the agreement that the plaintiff</p> <p>4 would not collect on the notes?</p> <p>5 A. I – I – during the bankruptcy,</p> <p>6 we're talking about, right?</p> <p>7 Q. I'm just following up on your</p> <p>8 statement that the conversation – that the</p> <p>9 agreement was entered into in the first quarter</p> <p>10 of 2020.</p> <p>11 Do I have that right, or is that</p> <p>12 wrong?</p> <p>13 A. Well –</p> <p>14 Q. Let's start again. Let's start</p> <p>15 again.</p> <p>16 This affirmative defense refers to</p> <p>17 an agreement. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. This is your affirmative defense;</p> <p>20 isn't that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And according to this affirmative</p> <p>23 defense, the agreement was that the plaintiff</p> <p>24 would not collect on the notes. Do I have that</p> <p>25 right?</p>



<p>Page 148</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. Let's start with: When was that</p> <p>4 agreement entered into?</p> <p>5 A. Okay. I'm going to have to parse,</p> <p>6 and I'm going to have to answer your question</p> <p>7 as accurately as I can.</p> <p>8 The subsequent conditions for</p> <p>9 forgiveness of the notes were established</p> <p>10 during a comp period in early 2019 for these</p> <p>11 notes that were drafted in '18.</p> <p>12 And the agreement was reached</p> <p>13 with – I believe it's a majority of, whatever,</p> <p>14 the Class A holders in the fourth amended</p> <p>15 Highland Capital partnership – partnership</p> <p>16 agreement. And that's what set up the</p> <p>17 subsequent conditions and the ability for the</p> <p>18 loans to be forgiven.</p> <p>19 When you get into bankruptcy,</p> <p>20 whether it was Seery, the independent board, or</p> <p>21 whoever, no one ever put any value nor was it</p> <p>22 ever included in any – were the notes included</p> <p>23 in any settlement discussions, period.</p> <p>24 Q. All right. So, it's your testimony</p> <p>25 that the debtor in settlement negotiations</p>	<p>Page 149</p> <p>1 Dondero - 5-28-2021</p> <p>2 never, ever, ever asked for or demanded the</p> <p>3 repayment of any unpaid principal or interest</p> <p>4 under these three notes?</p> <p>5 That's your sworn testimony?</p> <p>6 A. No.</p> <p>7 Q. So how did I get that wrong, then?</p> <p>8 A. Well, a few minutes ago we went over</p> <p>9 a letter from the debtor making a demand, but</p> <p>10 that was, I believe, this year or – yeah, I</p> <p>11 believe that was this year or the end of '20.</p> <p>12 What I'm saying is through '20, the</p> <p>13 full year of '20 when we were trying to work on</p> <p>14 a POT plan or global settlement before Seery</p> <p>15 betrayed the estate, we were – we never –</p> <p>16 there was never value assigned to the notes.</p> <p>17 Q. And you never offered to make any</p> <p>18 payment of any kind, principal or interest, on</p> <p>19 any of the notes in connection with any</p> <p>20 proposal you ever made as part of the grand</p> <p>21 bargain or POT plan; is that right?</p> <p>22 A. I think – I believe on the – not</p> <p>23 through 2020. I'll say that.</p> <p>24 By the time 2021 came along, on the</p> <p>25 eve of trial when I sent over a capitulation</p>
<p>Page 150</p> <p>1 Dondero - 5-28-2021</p> <p>2 offer – I think it was even titled that – I</p> <p>3 think I threw more money than everybody</p> <p>4 deserved or was entitled to, to try and resolve</p> <p>5 it. And implicitly, there was – because it</p> <p>6 was more than everybody was entitled to, I</p> <p>7 think implicitly it included value for the</p> <p>8 notes.</p> <p>9 Q. And is it your testimony that at no</p> <p>10 time prior to the delivery of the demand letter</p> <p>11 did the debtor ever make an offer to you or –</p> <p>12 of any kind that included any repayment of any</p> <p>13 principal or interest due under the three</p> <p>14 notes?</p> <p>15 A. I'm willing to be refreshed, but not</p> <p>16 that I recall.</p> <p>17 Q. Okay. And is it your testimony that</p> <p>18 anybody acting on behalf of the debtor ever</p> <p>19 agreed not to collect on the notes?</p> <p>20 A. I'm sorry. Repeat that one more</p> <p>21 time, just –</p> <p>22 Q. Is it your testimony – withdrawn.</p> <p>23 Did anybody acting on behalf of the</p> <p>24 debtor ever agree with you that it would not</p> <p>25 collect on the notes, irrespective of whether</p>	<p>Page 151</p> <p>1 Dondero - 5-28-2021</p> <p>2 there was a settlement?</p> <p>3 MS. DEITSCH-PEREZ: Object to form.</p> <p>4 A. Yeah. Again, that was my</p> <p>5 understanding through 2020.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Do you have –</p> <p>8 THE WITNESS: Let's – let's –</p> <p>9 before the next question, let's take a</p> <p>10 ten-minute break, ten-minute bathroom</p> <p>11 break, please.</p> <p>12 MR. MORRIS: No problem.</p> <p>13 MS. DEITSCH-PEREZ: Okay. We've</p> <p>14 been going an hour, so we'll come back</p> <p>15 at – 10:30, come back at 10:40?</p> <p>16 MR. MORRIS: That's fine. Thank</p> <p>17 you.</p> <p>18 (Recess held.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Is the agreement that you're</p> <p>21 referring to and that's referred to in</p> <p>22 paragraph 40, is that reflected in any document</p> <p>23 that you're aware of?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. And I believe you mentioned – and</p>



<p>Page 152</p> <p>1 Dondero - 5-28-2021</p> <p>2 we'll talk about this more later, but the part</p> <p>3 about the subsequent conditions or the</p> <p>4 conditions subsequent, that was the agreement</p> <p>5 that was entered into, did you say the – in</p> <p>6 part – as part of a compensation committee</p> <p>7 meeting?</p> <p>8 A. As part of our compensation process</p> <p>9 in – early in 2019.</p> <p>10 Q. Okay. And when you say "early</p> <p>11 2019," can you – do you recall what month?</p> <p>12 A. In January/February.</p> <p>13 Q. So, it's your testimony that in</p> <p>14 January or February 2019, you and the debtor</p> <p>15 reached the agreement that's referred to in</p> <p>16 paragraph 40 as subsequently amended by your</p> <p>17 amended answer, is that right?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 John, I thought you were going to</p> <p>21 agree to call Highland Highland –</p> <p>22 MR. MORRIS: That's fine. That's</p> <p>23 fine.</p> <p>24 (Simultaneous conversation.)</p> <p>25 MS. DEITSCH-PEREZ: – thereafter.</p>	<p>Page 153</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: That's fine. So, let</p> <p>3 me rephrase the question.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. I just want to make sure that I have</p> <p>6 this right, Mr. Dondero. It's your</p> <p>7 recollection that in January or February of</p> <p>8 2019, you reached an agreement with Highland</p> <p>9 that's reflected in paragraph 40 as</p> <p>10 subsequently amended to include the phrase</p> <p>11 "conditions subsequent." Do I have that right?</p> <p>12 A. I gave my testimony. I don't know</p> <p>13 if – I don't want to opine on the legal</p> <p>14 document and whether the legal document</p> <p>15 captures it there or somewhere else, but my –</p> <p>16 my recollection regarding pre-bankruptcy and</p> <p>17 post-bankruptcy is as I – as I stated already.</p> <p>18 Q. Let me – let me try this a</p> <p>19 different way.</p> <p>20 We looked at the three promissory</p> <p>21 notes. Were those promissory notes ever</p> <p>22 amended, to the best of your knowledge?</p> <p>23 A. No, not that – I mean, not – not</p> <p>24 in writing.</p> <p>25 Q. Okay.</p>
<p>Page 154</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. They were amended – they were</p> <p>3 amended – they were amended verbally.</p> <p>4 Q. Okay. And did that verbal agreement</p> <p>5 take place in January or February 2019?</p> <p>6 A. Yes.</p> <p>7 Q. Was there any verbal agreement</p> <p>8 related to the notes that occurred other than</p> <p>9 the one you're referring to in January or</p> <p>10 February 2019?</p> <p>11 A. Well, I gave my testimony during</p> <p>12 bankruptcy in 2020, the substance of all</p> <p>13 negotiations never assigned value to the – the</p> <p>14 notes.</p> <p>15 Q. But you never reached an agreement</p> <p>16 with the debtor on – on any settlement that</p> <p>17 would include either payment for or forgiveness</p> <p>18 of the notes; is that fair?</p> <p>19 You never reached an agreement?</p> <p>20 A. Not in writing, but I believe we</p> <p>21 were operating with an understanding that</p> <p>22 the – weren't likely to have value to the</p> <p>23 estate.</p> <p>24 MR. MORRIS: Okay. I move to</p> <p>25 strike, and I'll ask the question again.</p>	<p>Page 155</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Do you have any agreement with the</p> <p>4 debtor – agreement with the debtor with</p> <p>5 respect to any of the three notes?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. I believe the debtor in bankruptcy</p> <p>9 inherits that subsequent condition agreements</p> <p>10 from the first quarter of 2019; and I believe</p> <p>11 in 2020, the debtor operated and participated</p> <p>12 and acted in a way all negotiations that</p> <p>13 suggested the notes had – were unlikely to</p> <p>14 have any value to the estate.</p> <p>15 MR. MORRIS: Okay. I move to</p> <p>16 strike.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. And I'd ask you to please listen</p> <p>19 carefully to my question and only answer the</p> <p>20 question that's asked.</p> <p>21 Is there any agreement that pertains</p> <p>22 to the notes other than –</p> <p>23 MS. DEITSCH-PEREZ: Objection,</p> <p>24 asked –</p> <p>25 BY MR. MORRIS:</p>

<p>Page 156</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. – with –</p> <p>3 A. Yeah, I'm going to stick with my</p> <p>4 same answer that I've given twice.</p> <p>5 Q. I'm actually – I'm actually asking</p> <p>6 a different question; and if you would let me</p> <p>7 finish, this would go a lot more smoothly.</p> <p>8 Is there any agreement, written or</p> <p>9 verbal, between you and the debtor concerning</p> <p>10 the notes other than the verbal agreement that</p> <p>11 you contend was entered into in January and</p> <p>12 February 2019?</p> <p>13 I don't want to know about</p> <p>14 operations or offers or settlement discussions.</p> <p>15 I want to know about agreements: Is there any</p> <p>16 agreement pertaining to the notes other than</p> <p>17 the verbal agreement entered into in January or</p> <p>18 February 2019?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Yes.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. What other agreement exists?</p> <p>24 A. The agreement between, I guess, me</p> <p>25 and to the extent other related parties that</p>	<p>Page 157</p> <p>1 Dondero - 5-28-2021</p> <p>2 had notes with the debtor, beginning in the</p> <p>3 first quarter after the bankruptcy, that the</p> <p>4 notes were unlikely to have any value to the</p> <p>5 estate or have any value in settlement.</p> <p>6 Q. Okay. I don't want to know about</p> <p>7 value. I want to know if there is an agreement</p> <p>8 not to collect.</p> <p>9 So let me try and answer – ask the</p> <p>10 question differently.</p> <p>11 Other than the agreement that you</p> <p>12 assert was entered into in January or</p> <p>13 February 2019, did anybody acting on behalf of</p> <p>14 Highland or the debtor enter into any other</p> <p>15 agreement pursuant to which the debtor agreed</p> <p>16 not to collect on the notes?</p> <p>17 A. I'm – I'm going – same answer:</p> <p>18 Implicitly, yes.</p> <p>19 Q. Okay. Is that – is that implicit</p> <p>20 agreement written down anywhere?</p> <p>21 You know what? I'm going to move</p> <p>22 on, Mr. Dondero, and I look forward to the jury</p> <p>23 trial.</p> <p>24 MR. MORRIS: Can we put up the next</p> <p>25 exhibit, Number 8?</p>
<p>Page 158</p> <p>1 Dondero - 5-28-2021</p> <p>2 (Exhibit 8 introduced.)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Did you –</p> <p>5 MR. MORRIS: If we could scroll down</p> <p>6 a little bit.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Are you aware that the debtor served</p> <p>9 discovery in connection with this action?</p> <p>10 A. Not specifically.</p> <p>11 Q. Do you see that these are your</p> <p>12 objections and responses to the debtor's</p> <p>13 requests for admission?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever seen this document</p> <p>16 before?</p> <p>17 And we can scroll down, if you'd</p> <p>18 like.</p> <p>19 MS. DEITSCH-PEREZ: Scroll through</p> <p>20 it, please.</p> <p>21 THE WITNESS: Yeah, let's scroll</p> <p>22 through it.</p> <p>23 (Scrolling.)</p> <p>24 THE WITNESS: Can you keep going,</p> <p>25 please?</p>	<p>Page 159</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: That's the end.</p> <p>3 THE WITNESS: Okay.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Have you ever seen this document</p> <p>6 before, sir?</p> <p>7 A. I'm aware of it – I mean, yes, but</p> <p>8 I don't remember – ask whatever questions you</p> <p>9 want about it, and we'll go from there.</p> <p>10 Q. Did you see this document before –</p> <p>11 before it was sent to my firm on April 28th,</p> <p>12 2021?</p> <p>13 A. I mean, I'm sure I did and – or I'm</p> <p>14 sure I did if I was supposed to approve it, but</p> <p>15 I don't specifically remember.</p> <p>16 Q. And did you, in fact, authorize your</p> <p>17 attorneys to serve this particular document?</p> <p>18 A. I – I believe so.</p> <p>19 MR. MORRIS: Can we just go to the</p> <p>20 very last request for admission, number 14?</p> <p>21 (Scrolling.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. You'll see that Request For</p> <p>24 Admission Number 14 asks you to admit that as</p> <p>25 of January 22nd, 2021, you hadn't paid the</p>

<p>Page 160</p> <p>1 Dondero - 5-28-2021</p> <p>2 debtor the outstanding amount.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. And the definition of an</p> <p>6 "outstanding amount" is the number that's just</p> <p>7 above that.</p> <p>8 And in response, you admitted only</p> <p>9 that you hadn't paid the debtor the amount the</p> <p>10 debtor asserts is due on the notes in the</p> <p>11 amount of approximately \$9 million. Do you see</p> <p>12 that?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. I just want to ask a slightly</p> <p>15 different question: Have you paid any amounts</p> <p>16 to the debtor on account of the notes since</p> <p>17 December 1st, 2020?</p> <p>18 A. I – I don't – I don't know for</p> <p>19 sure, but I don't believe so.</p> <p>20 Q. Okay.</p> <p>21 MR. MORRIS: Can we go to the next</p> <p>22 exhibit, please, Number 9?</p> <p>23 (Exhibit 9 introduced.)</p> <p>24 MR. MORRIS: Okay. And if we can</p> <p>25 scroll down just a little bit.</p>	<p>Page 161</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. You'll see that these are the</p> <p>4 "Objections and Answers" that were tendered on</p> <p>5 your behalf in response to the debtor's first</p> <p>6 set of interrogatories.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 MR. MORRIS: And if we can go to the</p> <p>10 last page.</p> <p>11 MS. DEITSCH-PEREZ: Could you also</p> <p>12 scroll through it so he could –</p> <p>13 MR. MORRIS: Well, I'm happy to do</p> <p>14 it. I'd like to do it my way, please.</p> <p>15 Thank you.</p> <p>16 Can we go to the last page, please?</p> <p>17 (Scrolling.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Is that your signature there, sir?</p> <p>20 A. Yes.</p> <p>21 Q. And did you sign this document in</p> <p>22 front of a notary public?</p> <p>23 A. Yes.</p> <p>24 Q. And did you certify that you had</p> <p>25 read the document and the objections to the</p>
<p>Page 162</p> <p>1 Dondero - 5-28-2021</p> <p>2 interrogatories?</p> <p>3 A. Yes.</p> <p>4 Q. And did you swear that the answers</p> <p>5 were true and correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 MR. MORRIS: Now let's go back to</p> <p>9 the top of the document.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Did you, in fact, read this document</p> <p>12 before you signed the Verification in front of</p> <p>13 a notary?</p> <p>14 A. Yes.</p> <p>15 Q. Okay.</p> <p>16 MR. MORRIS: Go to page 4 of 6,</p> <p>17 please.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Just to help you out, do you see</p> <p>20 there's a reference to "Purported Agreement" in</p> <p>21 the first interrogatory, 1(a)?</p> <p>22 A. Uh-huh.</p> <p>23 Q. That's a "yes," sir, is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. The Purported Agreement</p>	<p>Page 163</p> <p>1 Dondero - 5-28-2021</p> <p>2 refers back to the agreement that we were</p> <p>3 looking at in paragraph 40 of the answer – and</p> <p>4 I can just read it again – that says – the</p> <p>5 agreement says, quote, "Plaintiff would not</p> <p>6 collect on the Notes."</p> <p>7 And I asked you three questions in</p> <p>8 the interrogatory. Did this interrogatory</p> <p>9 accurately state, to the best of your</p> <p>10 knowledge, that you, personally, entered into</p> <p>11 the Purported Agreement on behalf of the</p> <p>12 debtor?</p> <p>13 A. Which – which one are you – which</p> <p>14 agreement are you talking about?</p> <p>15 Q. Just the one that we were talking</p> <p>16 about earlier – and I'll just read it again</p> <p>17 for you. We can call it back on the screen, if</p> <p>18 it's helpful – but the agreement that you</p> <p>19 referred to in your answer that, quote,</p> <p>20 "plaintiff would not collect on the notes."</p> <p>21 That's the Purported Agreement.</p> <p>22 And so, I just want you to confirm</p> <p>23 that in your answer to Interrogatory No. 1, you</p> <p>24 stated that it was true and accurate that you</p> <p>25 entered into that agreement on behalf of the</p>

<p>Page 164</p> <p>1 Dondero - 5-28-2021</p> <p>2 debtor.</p> <p>3 Do I have that right?</p> <p>4 A. I'm -- I'm going to say no because I</p> <p>5 think you're using the wrong description of the</p> <p>6 debtor versus Highland prebankruptcy.</p> <p>7 Q. I appreciate that. I apologize.</p> <p>8 Let me rephrase the question. That's a fair</p> <p>9 point.</p> <p>10 Did you enter into the agreement</p> <p>11 referred to in your answer on behalf of</p> <p>12 Highland?</p> <p>13 A. The -- the agreement on behalf of</p> <p>14 Highland prebankruptcy was agreed to by</p> <p>15 majority of the Class A members, which I</p> <p>16 believe at the time was Dugaboy.</p> <p>17 Q. All right. That doesn't say that in</p> <p>18 your answer here, does it?</p> <p>19 A. Again, there was an original, I</p> <p>20 think, answers; and then there were amended</p> <p>21 answers. I think the lawyers did the best they</p> <p>22 could to capture -- but, evidently, the parsing</p> <p>23 between pre-bankruptcy agreements and</p> <p>24 post-bankruptcy agreements was done the best it</p> <p>25 could be by the lawyers but I -- I -- I don't</p>	<p>Page 165</p> <p>1 Dondero - 5-28-2021</p> <p>2 want to comment on the legal.</p> <p>3 Q. I don't want to comment on legal</p> <p>4 stuff, either; but you signed this document,</p> <p>5 you verified this document, and you verified</p> <p>6 that it was true and accurate. Correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. And in the first sentence to</p> <p>9 your answer in Interrogatory 1, you wrote, or</p> <p>10 somebody wrote on your behalf, quote: "The</p> <p>11 agreements were entered into on behalf of the</p> <p>12 debtor by James Dondero, subsequent to the time</p> <p>13 each note was executed."</p> <p>14 Is that an accurate statement, or is</p> <p>15 it an inaccurate statement?</p> <p>16 A. Again, it was between me and the</p> <p>17 Class A, the majority of the Class A members.</p> <p>18 It was a Class A -- the Class A members were</p> <p>19 representing Highland, never the debtor,</p> <p>20 because the debtor didn't exist yet.</p> <p>21 But then, again, I don't know if</p> <p>22 this paragraph refers to, again, how we</p> <p>23 operated in bankruptcy, which was the</p> <p>24 assumption that the notes had -- were likely --</p> <p>25 were not likely to have any value for the</p>
<p>Page 166</p> <p>1 Dondero - 5-28-2021</p> <p>2 estate. I don't -- I don't know which this is</p> <p>3 referring to.</p> <p>4 Q. You understand that the definition</p> <p>5 of the "debtor" includes Highland Capital</p> <p>6 Management, L.P.?</p> <p>7 A. I think we started off the depo by</p> <p>8 saying that there was a Highland prior to</p> <p>9 bankruptcy and then there was a Highland in</p> <p>10 bankruptcy and the debtor is Highland in</p> <p>11 bankruptcy.</p> <p>12 Q. Let me just ask you this question,</p> <p>13 sir: Is that first sentence accurate, or is it</p> <p>14 wrong?</p> <p>15 I didn't write it, so -- and you</p> <p>16 swore to it. You're the one who said it was</p> <p>17 true and accurate. So now I'm asking you: Is</p> <p>18 it actually true and accurate?</p> <p>19 A. I'm going to stick with my testimony</p> <p>20 so far. I don't want to opine on that. I</p> <p>21 think it depends -- it's not -- maybe it's not</p> <p>22 perfectly written, but...</p> <p>23 Q. Sir, with all due respect, please</p> <p>24 answer my question: Is the first sentence true</p> <p>25 and correct, as you verified?</p>	<p>Page 167</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: He already</p> <p>3 answered your question, John.</p> <p>4 MR. MORRIS: That's fine. You can</p> <p>5 have the objection, asked and answered.</p> <p>6 I'm asking him to answer again.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Is that first sentence true and</p> <p>9 correct as you verified it?</p> <p>10 A. "Behalf" probably isn't, like I</p> <p>11 said, the right word. It should be "between"</p> <p>12 the debtor and James Dondero. So that's how I</p> <p>13 would wordsmith that.</p> <p>14 Q. Okay. So this -- this first</p> <p>15 sentence is not true and correct, to the best</p> <p>16 of your knowledge; is that fair?</p> <p>17 A. I -- I don't want to say that other</p> <p>18 than I think it could be stated better.</p> <p>19 Q. Okay. But as stated right now, it</p> <p>20 says that the agreement was entered into on</p> <p>21 behalf of the debtor by James Dondero. Have I</p> <p>22 read that correctly?</p> <p>23 A. Yeah. I mean, that is what it says.</p> <p>24 Again, I feel like I'm interpreting legal</p> <p>25 phraseology here, like "on behalf of the</p>

<p>Page 168</p> <p>1 Dondero - 5-28-2021</p> <p>2 debtor." If it was an agreement between the</p> <p>3 debtor and the Class A entered into –</p> <p>4 MS. DEITSCH-PEREZ: Mr. Morris knows</p> <p>5 very well there's another – that there's</p> <p>6 an amendment to this. I don't know why</p> <p>7 he's doing this.</p> <p>8 Mr. Morris –</p> <p>9 (Simultaneous conversation.)</p> <p>10 MR. MORRIS: Please stop. Please</p> <p>11 stop.</p> <p>12 I'm allowed to go through his sworn</p> <p>13 statements. Give me a break. Please stop.</p> <p>14 Don't coach –</p> <p>15 MS. DEITSCH-PEREZ: You've been</p> <p>16 asking the same question over and over and</p> <p>17 over.</p> <p>18 MR. MORRIS: You know, I'm going to</p> <p>19 shut this down if you do it one more time.</p> <p>20 I will, and I'm happy to make the motion to</p> <p>21 the Judge. I'm begging you, please stop</p> <p>22 interfering.</p> <p>23 My apologies, Mr. Dondero. Never</p> <p>24 directed at you personally.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 169</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. The second sentence of the answer,</p> <p>3 have you been able to identify any documents</p> <p>4 that reflect or memorialize the agreements?</p> <p>5 A. I mean, I – I – I don't – I don't</p> <p>6 know, but I don't think so.</p> <p>7 Q. Thank you very much.</p> <p>8 MR. MORRIS: Go to the next</p> <p>9 document, please.</p> <p>10 (Exhibit 10 introduced.)</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Do you see that this is the "Amended</p> <p>13 Answer" that was filed on your behalf?</p> <p>14 MS. DEITSCH-PEREZ: Let's please –</p> <p>15 THE WITNESS: Yes.</p> <p>16 MS. DEITSCH-PEREZ: – scroll</p> <p>17 through.</p> <p>18 THE WITNESS: Yeah, please scroll</p> <p>19 through.</p> <p>20 (Scrolling.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. All right. Have you seen this</p> <p>23 document before, sir?</p> <p>24 A. Yes, generally.</p> <p>25 Q. Did you – do you recall if you saw</p>
<p>Page 170</p> <p>1 Dondero - 5-28-2021</p> <p>2 it prior to the time it was served and filed on</p> <p>3 your behalf?</p> <p>4 A. Probably.</p> <p>5 Q. Did you authorize it to be filed on</p> <p>6 your behalf?</p> <p>7 A. Yes.</p> <p>8 MR. MORRIS: Can we please go to</p> <p>9 page 6 of 8?</p> <p>10 (Scrolling.)</p> <p>11 MR. MORRIS: And if we can scroll</p> <p>12 just down to the "Affirmative Defenses."</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. All right. Do you see</p> <p>15 paragraph 40 –</p> <p>16 A. Yeah.</p> <p>17 Q. – as compared to the prior version</p> <p>18 of your answer, has added the words, quote,</p> <p>19 "upon fulfillment of conditions subsequent."</p> <p>20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Why were those words added?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. I think to make this document more</p>	<p>Page 171</p> <p>1 Dondero - 5-28-2021</p> <p>2 complete and more clarified as things were</p> <p>3 learned and investigated.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. And were things "learned and</p> <p>6 investigated" after the time that you submitted</p> <p>7 the – withdrawn.</p> <p>8 Were things "learned and</p> <p>9 investigated" after the time the original</p> <p>10 answer was served and filed on your behalf?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 And I would also just caution the</p> <p>14 witness before he speaks to think – to</p> <p>15 make sure he doesn't disclose</p> <p>16 attorney-client communications.</p> <p>17 A. I'm sorry, could you please repeat</p> <p>18 the question?</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Sure. Did you, personally, learn or</p> <p>21 discover anything related to this amended</p> <p>22 paragraph 40 after the time that the original</p> <p>23 answer was filed on your behalf?</p> <p>24 MS. DEITSCH-PEREZ: Same objection.</p> <p>25 A. We went through the – the –</p>



<p>Page 172</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: When you say</p> <p>3 "we," are you talking about you and</p> <p>4 lawyers?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MS. DEITSCH-PEREZ: Don't disclose</p> <p>7 your communications with lawyers.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. All right. I don't want to know</p> <p>10 anything about your communications with</p> <p>11 lawyers, but I'm going to ask you for facts.</p> <p>12 What facts, if any, did you learn</p> <p>13 after the original answer was filed that relate</p> <p>14 to the words, quote, "upon fulfillment of</p> <p>15 conditions subsequent."</p> <p>16 A. The "conditions subsequent" involved</p> <p>17 in the first quarter of 2019 were always an</p> <p>18 event, but it wasn't captured properly or</p> <p>19 needed to be clarified in the amendment.</p> <p>20 Q. Well, you mentioned that "things</p> <p>21 were learned and investigated" after the answer</p> <p>22 was filed, and I'm just trying to pin down what</p> <p>23 that was?</p> <p>24 A. I – I took it more seriously with</p> <p>25 the lawyers as it – as the notes became more</p>	<p>Page 173</p> <p>1 Dondero - 5-28-2021</p> <p>2 of an issue, and it's – I'm very busy over</p> <p>3 here and then spent more time going through the</p> <p>4 details, and this needed to be clarified or</p> <p>5 stated differently.</p> <p>6 Q. Okay. With respect to the agreement</p> <p>7 referred to in paragraph 40, whose idea was it</p> <p>8 to enter into that agreement?</p> <p>9 A. It was – it was mine.</p> <p>10 Q. Okay. And who were – who were the</p> <p>11 majority of Class A holders that you referred</p> <p>12 to earlier?</p> <p>13 A. That was the counterparty</p> <p>14 decision-maker for Highland prior to</p> <p>15 bankruptcy, and like I said, I believe it was</p> <p>16 Dugaboy.</p> <p>17 Q. Can you think of any other member of</p> <p>18 Class A who entered into this agreement on</p> <p>19 behalf of the debtor in the early part of 2019</p> <p>20 other than Dugaboy?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I do believe it was necessary.</p> <p>24 Dugaboy alone was the requisite majority. I</p> <p>25 didn't – I don't remember or remember even</p>
<p>Page 174</p> <p>1 Dondero - 5-28-2021</p> <p>2 thinking about including anybody else.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. And to be clear, Mr. Dondero,</p> <p>5 I'm not – I don't have a view one way or the</p> <p>6 other as to whether you should or shouldn't –</p> <p>7 who you should have contacted.</p> <p>8 I just want to know who – if you</p> <p>9 can identify for me the Class A members who</p> <p>10 acted to approve the agreement that's referred</p> <p>11 to in paragraph 40.</p> <p>12 Is there anybody other than Dugaboy?</p> <p>13 A. Not – not – not – not</p> <p>14 specifically regarding that comp cycle.</p> <p>15 Q. Okay. And who acted on behalf of</p> <p>16 Dugaboy to enter into the agreement that's</p> <p>17 referred to in paragraph 40?</p> <p>18 A. The trustee.</p> <p>19 Q. The trustee of Dugaboy?</p> <p>20 A. Yes.</p> <p>21 Q. And who was the trustee of Dugaboy</p> <p>22 in the January/February 2019 time period that</p> <p>23 entered into this agreement on behalf of the</p> <p>24 debtor?</p> <p>25 A. My sister Nancy.</p>	<p>Page 175</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Did you and Nancy discuss this</p> <p>3 agreement at all?</p> <p>4 A. This agreement? No.</p> <p>5 Q. Can you describe –</p> <p>6 MS. DEITSCH-PEREZ: What do you mean</p> <p>7 by "this agreement"?</p> <p>8 (Simultaneous conversation.)</p> <p>9 A. Not the one that's on the screen.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Yes. That's the only one that I'm</p> <p>12 talking about, so –</p> <p>13 MS. DEITSCH-PEREZ: So you mean –</p> <p>14 MR. MORRIS: Please, please, Deb –</p> <p>15 MS. DEITSCH-PEREZ: John, can you</p> <p>16 please clarify: Are you asking if he</p> <p>17 discussed the answer with Nancy or the –</p> <p>18 MR. MORRIS: I didn't use the word</p> <p>19 "answer." I used the word "agreement," so</p> <p>20 let me –</p> <p>21 MS. DEITSCH-PEREZ: I know, but he</p> <p>22 pointed to the screen.</p> <p>23 (Simultaneous conversation.)</p> <p>24 MR. MORRIS: Are you done?</p> <p>25 MS. DEITSCH-PEREZ: Yes.</p>



<p>Page 176</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Mr. Dondero, can you describe for</p> <p>4 me – withdrawn.</p> <p>5 Did you discuss with your sister</p> <p>6 Nancy, the agreement that's referred to in</p> <p>7 paragraph 40?</p> <p>8 A. The agreement to subsequent</p> <p>9 conditions, yes, absolutely. But this</p> <p>10 agreement that's on the screen, I've never –</p> <p>11 I've never – I've never shown her this</p> <p>12 document or talked to her about it.</p> <p>13 Q. I'm not asking about the document.</p> <p>14 I'm not asking about the document. I'm asking</p> <p>15 about the agreement that's referred to in</p> <p>16 paragraph 40.</p> <p>17 Do you understand that?</p> <p>18 A. Yes. And, yes, we had several</p> <p>19 conversations about it.</p> <p>20 Q. Okay. Can you describe for me</p> <p>21 everything you remember about your discussions</p> <p>22 with Nancy concerning the agreement that's</p> <p>23 referred to in paragraph 40?</p> <p>24 A. That the loans that were in place</p> <p>25 would be forgiven upon a monetization – the</p>	<p>Page 177</p> <p>1 Dondero - 5-28-2021</p> <p>2 favorable monetization of certain large or</p> <p>3 liquid assets on the Highland balance sheet;</p> <p>4 and the three that were focused on was MGM,</p> <p>5 Trussway, and Cornerstone.</p> <p>6 Q. Did she say anything in response?</p> <p>7 A. Just, "How much are we talking</p> <p>8 about?" And I told her it was about 9 million</p> <p>9 in aggregate, and – and I told her that it</p> <p>10 was – that the forgiveness or the compensation</p> <p>11 was compliant regarding any credit covenants or</p> <p>12 Hunter Mountain covenants –</p> <p>13 Q. Do you recall any –</p> <p>14 A. – that – that if it were to be</p> <p>15 forgiven, that additional compensation would be</p> <p>16 compliant or permitted and really not material</p> <p>17 relative to any outstanding credit agreements</p> <p>18 that Highland had or agreements with Hunter</p> <p>19 Mountain.</p> <p>20 Q. Is this something that you discussed</p> <p>21 with her, or is this just information that</p> <p>22 you're giving me?</p> <p>23 A. This is what I discussed – that's</p> <p>24 almost the entirety of the conversation. It</p> <p>25 happened over a couple different conversations,</p>
<p>Page 178</p> <p>1 Dondero - 5-28-2021</p> <p>2 but...</p> <p>3 Q. Did anybody participate in any of</p> <p>4 the conversations you're describing other than</p> <p>5 you and your sister?</p> <p>6 A. I don't believe it was necessary, it</p> <p>7 didn't include anybody else.</p> <p>8 Q. Okay. Again, I'm not here to</p> <p>9 question. I'm just looking for facts,</p> <p>10 Mr. Dondero.</p> <p>11 So nobody participated in any of</p> <p>12 these conversations that you can recall other</p> <p>13 than you and Nancy; is that correct?</p> <p>14 A. Correct, that I – yes, there was</p> <p>15 never a third party involved in our</p> <p>16 conversations. I don't know – I don't think</p> <p>17 she discussed it with anybody else, but I don't</p> <p>18 know.</p> <p>19 Q. Did – was the agreement subject to</p> <p>20 any negotiation? Did she make any</p> <p>21 counterproposal of any kind?</p> <p>22 A. No. No, I – again, I believe both</p> <p>23 of our views at the time was that it was</p> <p>24 immaterial to Highland overall or any other</p> <p>25 agreements.</p>	<p>Page 179</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Do you know if she sought any</p> <p>3 independent advice before entering into the</p> <p>4 agreement that you've described?</p> <p>5 A. I don't know.</p> <p>6 Q. Do you recall whether you provided</p> <p>7 her with any documents of any kind in</p> <p>8 connection with the discussions that led to the</p> <p>9 agreement that's referred to in paragraph 40?</p> <p>10 A. I – I have no – I don't – I don't</p> <p>11 believe – no, I don't believe I gave her</p> <p>12 copies of the relevant Hunter Mountain</p> <p>13 limitations, or whatever. I just spoke to her</p> <p>14 about it.</p> <p>15 Q. Okay. I'm just asking – I'm asking</p> <p>16 a broader question: Do you recall giving her</p> <p>17 any documents of any kind in connection with</p> <p>18 the discussions that led to the agreement in</p> <p>19 paragraph 40?</p> <p>20 A. Not – not that I recall. She –</p> <p>21 she may – she may have some, but I don't</p> <p>22 remember.</p> <p>23 Q. Do you know if there were any</p> <p>24 resolutions that were adopted by Highland to</p> <p>25 reflect the agreement that's referred to in</p>

<p>Page 180</p> <p>1 Dondero - 5-28-2021</p> <p>2 paragraph 40?</p> <p>3 A. Resolutions that – no, not that I'm</p> <p>4 aware of.</p> <p>5 Q. Did you give – did you give Nancy a</p> <p>6 copy of the three promissory notes that were</p> <p>7 the subject of the agreement referred to in</p> <p>8 paragraph 40?</p> <p>9 A. No.</p> <p>10 Q. Did she ask to see any documents</p> <p>11 before entering into the agreement that's</p> <p>12 referred to in paragraph 40?</p> <p>13 A. I – I don't remember.</p> <p>14 Q. Did you suggest that she speak with</p> <p>15 anybody prior to the time that she entered into</p> <p>16 the agreement that's referred to in</p> <p>17 paragraph 40?</p> <p>18 MS. DEITSCH-PEREZ: Asked and</p> <p>19 answered.</p> <p>20 A. Yeah. No.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you know whether she actually</p> <p>23 spoke with anybody concerning the subject</p> <p>24 matter of the agreement that's referred to in</p> <p>25 paragraph 40 prior to the time it was entered</p>	<p>Page 181</p> <p>1 Dondero - 5-28-2021</p> <p>2 into?</p> <p>3 A. I don't know.</p> <p>4 Q. Is there any time period by which</p> <p>5 the subsequent – the conditions subsequent</p> <p>6 have to be fulfilled, or are they open-ended?</p> <p>7 A. I believe it was open-ended.</p> <p>8 Q. Under the agreement that's referred</p> <p>9 to in paragraph 40, did the debtor surrender</p> <p>10 its right to make a demand under the promissory</p> <p>11 notes?</p> <p>12 MS. DEITSCH-PEREZ: And, again, are</p> <p>13 you talking about the debtor as in</p> <p>14 post-bankruptcy or –</p> <p>15 MR. MORRIS: I apologize. Thank</p> <p>16 you. Thank you. Thank you. Thank you.</p> <p>17 Withdrawn.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Under the agreement that you reached</p> <p>20 with Nancy that's referred to in paragraph 40,</p> <p>21 was it your understanding that Highland</p> <p>22 surrendered its right to make a demand for</p> <p>23 payment of unpaid principal and interest under</p> <p>24 the notes?</p> <p>25 A. I think essentially, yes.</p>
<p>Page 182</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Okay. What did Highland receive in</p> <p>3 return for its agreement to surrender its right</p> <p>4 to make a demand for unpaid principal and</p> <p>5 interest, if anything?</p> <p>6 A. I think with all forgiveness of</p> <p>7 notes, what it gets is it gets focus in terms</p> <p>8 of the monetization and it reduces additional</p> <p>9 compensation that I could have/would have taken</p> <p>10 otherwise, or could have/would have been</p> <p>11 entitled to otherwise.</p> <p>12 So, it's – yeah, I mean, I think</p> <p>13 it's, again, heightened focused for something</p> <p>14 that would be great for the debtor or great for</p> <p>15 Highland at the time and reduces – that form</p> <p>16 of forgiveness becomes compensation when and if</p> <p>17 it occurs, and then it – it theoretically</p> <p>18 reduces other compensation.</p> <p>19 Q. So why not just forgive it at that</p> <p>20 moment?</p> <p>21 Why tie it to "conditions</p> <p>22 subsequent"?</p> <p>23 A. I thought it was more appropriate.</p> <p>24 Q. Did you and Nancy discuss at all</p> <p>25 what the benefit would be to Highland from this</p>	<p>Page 183</p> <p>1 Dondero - 5-28-2021</p> <p>2 arrangement?</p> <p>3 A. The focus – the focus parts for</p> <p>4 sure.</p> <p>5 Q. And without – without the agreement</p> <p>6 that's referred to in paragraph 40, you</p> <p>7 wouldn't have been focused on maximizing the</p> <p>8 enterprises; is that right?</p> <p>9 A. No.</p> <p>10 Q. So – I'm sorry, maybe I missed it.</p> <p>11 When you used the word "focus" –</p> <p>12 let me – when you use the word "focus," what</p> <p>13 do you mean?</p> <p>14 What is the benefit to the debtor?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 He said "heightened focus."</p> <p>18 A. Yeah, heightened focused was my</p> <p>19 words, which –</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay.</p> <p>22 A. – you know, means beyond normal</p> <p>23 focus. It means additional effort just like in</p> <p>24 any company or what we do here with other</p> <p>25 employees, for things you really want to get</p>

<p style="text-align: right;">Page 184</p> <p>1 Dondero - 5-28-2021</p> <p>2 done or focus on, you provide that extra</p> <p>3 incentive.</p> <p>4 Q. Okay. So – so that's the benefit</p> <p>5 to Highland, was that you were going to have a</p> <p>6 heightened focus on maximizing value; is that</p> <p>7 fair?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. And then also the part 2 of my</p> <p>11 answer, right, which, you know, that</p> <p>12 forgiveness would be compensation which</p> <p>13 would – in any given year, additional</p> <p>14 compensation coming from forgiveness reduces</p> <p>15 other compensation.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Was that part of the agreement that</p> <p>18 you reached with Nancy? Was that – was that</p> <p>19 when these notes were forgiven, you would forgo</p> <p>20 an amount equivalent to the outstanding</p> <p>21 principal and unpaid interest?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form, misstates his prior testimony.</p> <p>24 A. Yeah. I remember discussing the</p> <p>25 focus part with her. The – I was giving that</p>	<p style="text-align: right;">Page 185</p> <p>1 Dondero - 5-28-2021</p> <p>2 answer when you were asking me what would be</p> <p>3 the benefit or consideration to Highland and</p> <p>4 then ultimately to debtor. I was giving you</p> <p>5 compensation answer.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. So I just – but I do want to</p> <p>8 try to understand from your perspective the</p> <p>9 benefit to the debtor.</p> <p>10 And, one, you told me about the</p> <p>11 heightened focus, and the second –</p> <p>12 A. Right.</p> <p>13 Q. – I think you said, and correct me</p> <p>14 if I'm wrong, that it would relieve the debtor</p> <p>15 of paying some compensation in the future.</p> <p>16 Am I mistaken about that?</p> <p>17 A. Yeah, I mean – I'm sorry. Repeat</p> <p>18 that one more time, please.</p> <p>19 Q. I believe you said that the second</p> <p>20 benefit to Highland from entering into the</p> <p>21 agreement referred to in paragraph 40 is that</p> <p>22 it would relieve them of a future obligation to</p> <p>23 pay compensation in the same amount.</p> <p>24 Do I have that right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 186</p> <p>1 Dondero - 5-28-2021</p> <p>2 form.</p> <p>3 A. Maybe not exactly "the same amount,"</p> <p>4 but it would – it would – it would reduce</p> <p>5 comp – yes, it would – it would, like, in the</p> <p>6 next cycle, reduce – or when it was realized,</p> <p>7 would likely reduce comp then.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Okay. And by what amount would it</p> <p>10 likely reduce comp, then?</p> <p>11 A. I don't know. By significant –</p> <p>12 by – by a significant amount, by something</p> <p>13 similar to the 9 million bucks.</p> <p>14 Q. Okay. So, is there any – I'm just</p> <p>15 trying to understand your perspective.</p> <p>16 One of the benefits from entering</p> <p>17 into the agreement referred to in paragraph 40</p> <p>18 is that upon the realization of the forgiveness</p> <p>19 of the debt, Highland or the debtor, whatever</p> <p>20 the case may be, in the future would be</p> <p>21 relieved from paying you an amount similar to</p> <p>22 the principal amount of the notes?</p> <p>23 Do I have that right?</p> <p>24 A. Yeah, or – or – yeah. I guess the</p> <p>25 reason why I keep going back and forth on the</p>	<p style="text-align: right;">Page 187</p> <p>1 Dondero - 5-28-2021</p> <p>2 exactness of the answer is that if –</p> <p>3 there's – depending on what the compensation</p> <p>4 target is and whether or not you wanted to grow</p> <p>5 something up or you're looking for a net</p> <p>6 amount, but forgiveness of debt becomes a</p> <p>7 taxable event with no – no additional ability</p> <p>8 to pay taxes. So it's usually not an exact</p> <p>9 offset to future compensation, the way we've</p> <p>10 done it here historically.</p> <p>11 Q. In the agreement that you reached</p> <p>12 with Nancy that's referred to in paragraph 40,</p> <p>13 were there any other – withdrawn.</p> <p>14 In the agreement that you reached</p> <p>15 with Nancy that's referred to in paragraph 40,</p> <p>16 were there any circumstances under which you</p> <p>17 would have been obligated to pay all unpaid</p> <p>18 principal and interest under the notes?</p> <p>19 A. If the illiquid assets weren't – or</p> <p>20 if – if none of the illiquid assets were</p> <p>21 monetized.</p> <p>22 Q. But you were – you were, at the</p> <p>23 time you entered into this oral agreement, in</p> <p>24 control of whether or not to monetize those</p> <p>25 illiquid assets, right?</p>

<p>Page 188</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. And I expected they would be over</p> <p>3 time, yes.</p> <p>4 Q. Okay. So, based on your control of</p> <p>5 the enterprise at the time that you entered</p> <p>6 into the agreement, is there any – did you</p> <p>7 have any – any scenario under which you</p> <p>8 believed you might actually have to pay back</p> <p>9 the unpaid principal and interest due under the</p> <p>10 notes?</p> <p>11 A. If they weren't monetized.</p> <p>12 Q. Okay. Anything else?</p> <p>13 A. Assets weren't monetized, yeah.</p> <p>14 Q. Anything else?</p> <p>15 A. That's – that's my recollection.</p> <p>16 Q. If – if you – have the "conditions</p> <p>17 subsequent" been met yet?</p> <p>18 A. I believe the announcement of the</p> <p>19 MGM sale will meet the conditions precedent</p> <p>20 when it closes four or five months from now.</p> <p>21 Q. Okay. But none of them have been</p> <p>22 met – have the conditions subsequent been met</p> <p>23 as of today?</p> <p>24 A. Have the conditions subsequent been</p> <p>25 met today. I don't have awareness of –</p>	<p>Page 189</p> <p>1 Dondero - 5-28-2021</p> <p>2 despite objecting vehemently, we don't have</p> <p>3 awareness of what the debtor is doing with</p> <p>4 Trussway or Cornerstone. So there's a</p> <p>5 potential that those could have triggered, but</p> <p>6 I don't – I don't have – I don't have</p> <p>7 awareness.</p> <p>8 Q. Okay. Do you know – and forgive</p> <p>9 the question, sir, honestly. But do you</p> <p>10 know –</p> <p>11 A. Sure.</p> <p>12 Q. – whether your estate would be</p> <p>13 liable to pay all of the undue principal –</p> <p>14 unpaid principal and interest if you passed</p> <p>15 before the conditions subsequent were</p> <p>16 satisfied?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. I – I don't know that answer.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. That wasn't something that you and</p> <p>22 your sister discussed in January or February of</p> <p>23 2019; is that fair?</p> <p>24 A. I wasn't contemplating that event at</p> <p>25 that point in time.</p>
<p>Page 190</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. That's why I say "forgive the</p> <p>3 question," sir.</p> <p>4 Did you ever ask anybody to write</p> <p>5 the agreement in paragraph 40 down on paper so</p> <p>6 that it was memorialized somewhere?</p> <p>7 A. No.</p> <p>8 Q. Did you and Nancy –</p> <p>9 (Simultaneous conversation.)</p> <p>10 A. I'm sorry, go ahead.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Do you and Nancy communicate by</p> <p>13 email from time to time?</p> <p>14 A. Almost entirely phone. I – from</p> <p>15 time to time, but it's almost entirely phone.</p> <p>16 Q. All right. Let's – let's move on.</p> <p>17 A. Can I clarify something from before?</p> <p>18 Q. Of course.</p> <p>19 A. If the assets were never monetized</p> <p>20 or the – the notes would stay in place and not</p> <p>21 be forgiven.</p> <p>22 If the assets were all monetized</p> <p>23 below cost or what was considered a less</p> <p>24 favorable scenario, then it would be – to</p> <p>25 forgive it, something would have to be</p>	<p>Page 191</p> <p>1 Dondero - 5-28-2021</p> <p>2 monetized above cost, you know; but if they</p> <p>3 were all monetized below cost, that would make</p> <p>4 the note payable.</p> <p>5 Q. I appreciate that.</p> <p>6 MR. MORRIS: Let's go to the next</p> <p>7 document, document Number 11.</p> <p>8 (Exhibit 11 introduced.)</p> <p>9 MR. MORRIS: If we could just scroll</p> <p>10 down, please.</p> <p>11 (Scrolling.)</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. All right. Now, these are your</p> <p>14 objections and responses to the debtor's second</p> <p>15 request for admissions. Do you see that?</p> <p>16 A. Yes.</p> <p>17 MR. MORRIS: And let's scroll down</p> <p>18 to page 4, please.</p> <p>19 (Scrolling.)</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. Do you recall whether you saw</p> <p>22 this document before it was served and filed on</p> <p>23 your behalf?</p> <p>24 A. Yes. Can we go all the way through,</p> <p>25 just go all the way down?</p>

<p>Page 192</p> <p>1 Dondero - 5-28-2021</p> <p>2 Was this notarized, also?</p> <p>3 Q. No, because these are responses to</p> <p>4 requests to admit. You only –</p> <p>5 A. Okay.</p> <p>6 Q. You only notarize responses to</p> <p>7 interrogatories, for whatever reason. So these</p> <p>8 were not. Yeah.</p> <p>9 But I'm just asking you if you have</p> <p>10 a memory of reviewing the requests for</p> <p>11 admission before they were served and filed on</p> <p>12 your behalf?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And did you authorize your</p> <p>15 lawyers to serve and file this document on your</p> <p>16 behalf?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Looking at Request For</p> <p>19 Admission Number 1, it asks you to admit that</p> <p>20 in December 2019, you made a payment to the</p> <p>21 debtor, a portion of which was applied to</p> <p>22 reduce principal and/or interest due under one</p> <p>23 or more of the notes.</p> <p>24 Have I read that correctly?</p> <p>25 A. Yes.</p>	<p>Page 193</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. And you've admitted that that</p> <p>3 statement is true and accurate as written,</p> <p>4 right?</p> <p>5 A. Yeah, I believe so. The – yeah, I</p> <p>6 believe so. Let me let you ask the questions.</p> <p>7 Q. Okay. Do you have any reason to</p> <p>8 believe, as you sit here right now – let me</p> <p>9 ask you a different question.</p> <p>10 Do you want to amend your response</p> <p>11 in any way right now?</p> <p>12 A. I – I'm not aware of small amounts</p> <p>13 in terms of, like, interest or principal; and</p> <p>14 then sometimes the tax guys will say period<sup>ic</sup></p> <p>15 interest payments are important to – for the</p> <p>16 character of the notes, so sometimes period<sup>ic</sup></p> <p>17 interest payments are made. Sometimes I think</p> <p>18 they peck on some of the notes.</p> <p>19 I don't – I don't know or remember,</p> <p>20 but I hope that something like this is correct.</p> <p>21 Sometimes, if there was a need for cash into</p> <p>22 Highland, the easiest way to – for me or a</p> <p>23 different entity to put cash into Highland was</p> <p>24 to reduce a principal amount of a note with the</p> <p>25 thought that we could create new notes or</p>
<p>Page 194</p> <p>1 Dondero - 5-28-2021</p> <p>2 increase another note later.</p> <p>3 So how many times or how often</p> <p>4 interest payments were made or if there was</p> <p>5 some small principal payment made at some</p> <p>6 point, I don't know the details; but I'm hoping</p> <p>7 that's accurate.</p> <p>8 Q. Okay. We looked at three notes that</p> <p>9 were signed by you in 2018, correct?</p> <p>10 A. Yes.</p> <p>11 Q. You signed other notes in favor of</p> <p>12 Highland prior to that time, correct?</p> <p>13 A. I believe – yeah. I mean, I</p> <p>14 believe there were numerous notes beyond these.</p> <p>15 Q. Were – were – did you ever sign a</p> <p>16 note in favor of Highland that was forgiven?</p> <p>17 A. I don't – I don't know.</p> <p>18 Q. Do you have any recollection of ever</p> <p>19 paying taxes in connection with a note that was</p> <p>20 subsequently forgiven by Highland?</p> <p>21 A. If there was – if there was a</p> <p>22 forgiveness and it was taxable, I would have</p> <p>23 paid the taxes. We were compliant in that</p> <p>24 regard. I'm a hundred percent comfortable</p> <p>25 we're compliant, but I don't know.</p>	<p>Page 195</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Okay. And I appreciate – I didn't</p> <p>3 mean to suggest that you weren't compliant,</p> <p>4 sir. I'm just asking you if you can identify</p> <p>5 any note that you made in favor of Highland</p> <p>6 that was ever forgiven.</p> <p>7 MS. DEITSCH-PEREZ: And I'm just</p> <p>8 going to object because, while he's not</p> <p>9 30(b)(6) witness, this is a deposition</p> <p>10 taken in a particular case and he may have</p> <p>11 not looked at the records going back to</p> <p>12 2000, or whatever, that's – since when</p> <p>13 Highland was started.</p> <p>14 MR. MORRIS: I just can't tell you</p> <p>15 how inappropriate that is.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Go ahead, Mr. Dondero.</p> <p>18 A. The same answer, I don't know.</p> <p>19 Q. Okay. You did, in fact, pay in full</p> <p>20 all principal and interest due on notes that</p> <p>21 you made in favor of Highland other than the</p> <p>22 three notes at issue in this case, correct?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. I – I don't know. I would repeat</p>



<p>Page 196</p> <p>1 Dondero - 5-28-2021</p> <p>2 the answer I gave a few minutes ago when I kind</p> <p>3 of rambled about cash management.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you know how many notes you made</p> <p>6 in favor of Highland beyond the three that are</p> <p>7 the subject of this litigation?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. I – I do not, regarding myself</p> <p>11 personally.</p> <p>12 I am aware that the aggregate amount</p> <p>13 of affiliated notes is approximately 70 or</p> <p>14 \$80 million, including my notes; but that's it.</p> <p>15 I mean, that's all I know.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. All right. I'm just asking you</p> <p>18 about you, in your individual capacity.</p> <p>19 A. I don't know.</p> <p>20 Q. You don't know –</p> <p>21 (Audio distortion.)</p> <p>22 THE REPORTER: You broke up, sir.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. You don't know the number of</p> <p>25 notes – (audio distortion) – Highland beyond</p>	<p>Page 197</p> <p>1 Dondero - 5-28-2021</p> <p>2 these three, correct?</p> <p>3 A. Correct.</p> <p>4 Q. And you can't recall whether any –</p> <p>5 any notes that you made in favor of Highland</p> <p>6 were ever forgiven, correct?</p> <p>7 A. I – I don't know.</p> <p>8 Q. Okay. So, did you ever object to</p> <p>9 the application of the payment referred to in</p> <p>10 Request For Admission Number 1 to principal</p> <p>11 and/or interest due under one or more of the</p> <p>12 notes?</p> <p>13 Did you ever object to the</p> <p>14 application of the payment in that way?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. I think the decision on how to</p> <p>18 handle cash needed at Highland was entirely</p> <p>19 made and the application to note principal or</p> <p>20 interest was – was entirely decided by the</p> <p>21 accounting group.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. But did you know that decision was</p> <p>24 made in or around December 2019?</p> <p>25 A. Not really, no. Not specifically.</p>
<p>Page 198</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Well, you've admitted to the fact.</p> <p>3 So, when did you learn that in December 2019 a</p> <p>4 payment made on your behalf, at least a portion</p> <p>5 of which was applied to reduce principal and/or</p> <p>6 interest due under one or more of the notes?</p> <p>7 When did you learn that?</p> <p>8 A. I don't know. It would have been as</p> <p>9 part of the process in preparing this document.</p> <p>10 Q. So it's your testimony that somebody</p> <p>11 used your money in December 2019 to reduce</p> <p>12 principal and/or interest due under one or more</p> <p>13 of the notes without your knowledge?</p> <p>14 A. Yeah, without my specific knowledge.</p> <p>15 There was a reason to put money in at that</p> <p>16 point in time, and then how they applied it was</p> <p>17 not my decision –</p> <p>18 Q. Making –</p> <p>19 A. – not –</p> <p>20 Q. Making a payment – you would agree</p> <p>21 that making a payment of principle or interest</p> <p>22 under one or more of the notes conflicts with</p> <p>23 the agreement that you reached with Nancy,</p> <p>24 right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 199</p> <p>1 Dondero - 5-28-2021</p> <p>2 form.</p> <p>3 A. No, that's not true.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Well, the conditions subsequent</p> <p>6 hadn't arisen yet; is that fair?</p> <p>7 A. The notes were in '18, correct?</p> <p>8 Q. Yes, sir.</p> <p>9 A. And then, yeah, the subsequent</p> <p>10 condition was in the first quarter of '19.</p> <p>11 Q. Right. And then, in December of</p> <p>12 '19, a payment of principal and/or interest was</p> <p>13 made against one or more of the notes, right?</p> <p>14 A. Yes.</p> <p>15 Q. And I'm just asking you, sir, if</p> <p>16 that's inconsistent with the agreement that you</p> <p>17 reached with Nancy.</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. And I'm saying – I'm saying no. I</p> <p>21 mean, it's –</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Okay. Since learning of the</p> <p>24 payment, have you tried to identify the person</p> <p>25 who was responsible for applying your money in</p>



<p>Page 200</p> <p>1 Dondero - 5-28-2021</p> <p>2 the way that's described in Request For</p> <p>3 Admission Number 1?</p> <p>4 A. No.</p> <p>5 MR. MORRIS: Can we go down to</p> <p>6 number 4, please?</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. In your amended answer, I think you</p> <p>9 asserted that the – "each note is ambiguous."</p> <p>10 Do I have that right?</p> <p>11 We can go back, if you would like to</p> <p>12 look?</p> <p>13 A. Is this admission number 4? Is that</p> <p>14 where you're pointing to?</p> <p>15 Q. It is, and I'll just read it. It</p> <p>16 refers to paragraph 45 of the amended answer,</p> <p>17 and I'll read it. But I'm happy to go back and</p> <p>18 put it on the screen, if you'd would like.</p> <p>19 But it says simply: "Defendant</p> <p>20 further asserts that each note is ambiguous."</p> <p>21 So request for number 4 asks you to</p> <p>22 admit that before you served that amended</p> <p>23 answer, you had never informed the debtor of</p> <p>24 your belief that any provision of the notes was</p> <p>25 ambiguous.</p>	<p>Page 201</p> <p>1 Dondero - 5-28-2021</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. And you've denied that request for</p> <p>5 admission.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. So, who did you inform at the debtor</p> <p>9 of your belief that a provision of the notes</p> <p>10 was ambiguous?</p> <p>11 Who did you –</p> <p>12 MS. DEITSCH-PEREZ: Object.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Who did you communicate that to?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form, no foundation.</p> <p>17 A. I – I – I don't – "I don't know"</p> <p>18 is my answer to pretty much any question you</p> <p>19 could ask there.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. This is – you're denying the</p> <p>22 request for admission, and that's your right.</p> <p>23 Did you ever inform the debtor of</p> <p>24 your belief that a provision of the notes was</p> <p>25 ambiguous?</p>
<p>Page 202</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: Object, no</p> <p>3 foundation.</p> <p>4 A. As – ask the question again,</p> <p>5 please.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Did you ever inform the debtor of</p> <p>8 your belief that any provision of the notes was</p> <p>9 ambiguous?</p> <p>10 MS. DEITSCH-PEREZ: Object, no</p> <p>11 foundation.</p> <p>12 A. You know, I don't know what</p> <p>13 conversations were had between lawyers. I – I</p> <p>14 don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Okay. So I'm going to ask a</p> <p>17 slightly different question because of your</p> <p>18 answer: Can you tell me whether you or anybody</p> <p>19 acting on your behalf ever informed the debtor</p> <p>20 of your belief that any provision of any of the</p> <p>21 notes was ambiguous?</p> <p>22 MS. DEITSCH-PEREZ: Object, no</p> <p>23 foundation.</p> <p>24 A. I'm going to have to say, yes, I</p> <p>25 believe that statement is true; but I don't</p>	<p>Page 203</p> <p>1 Dondero - 5-28-2021</p> <p>2 have specific knowledge.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you have any knowledge, can you</p> <p>5 identify any person who informed the debtor of</p> <p>6 your belief?</p> <p>7 A. I don't have specific knowledge. I</p> <p>8 don't – I don't – I don't know.</p> <p>9 Q. Can you tell me when the debtor was</p> <p>10 informed of your belief that any provision of</p> <p>11 the notes was ambiguous?</p> <p>12 MS. DEITSCH-PEREZ: Object, no</p> <p>13 foundation.</p> <p>14 A. I don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Can you identify the person who was</p> <p>17 acting on behalf of the debtor who was informed</p> <p>18 by you or anyone acting on your behalf of your</p> <p>19 belief that any provision of the notes was</p> <p>20 ambiguous?</p> <p>21 MS. DEITSCH-PEREZ: Object, no</p> <p>22 foundation.</p> <p>23 A. I don't know.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Okay.</p>

<p style="text-align: right;">Page 204</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: Let's go to the next</p> <p>3 exhibit, please.</p> <p>4 THE WITNESS: Is this a good time</p> <p>5 for a lunch break?</p> <p>6 MR. MORRIS: Yeah. I'm happy to do</p> <p>7 it. I'm trying to move as quickly as I</p> <p>8 can, Mr. Dondero. This is a little bit</p> <p>9 longer than you and I usually sit for, and</p> <p>10 I apologize for that, but I'm happy to take</p> <p>11 as long a break as you – as you need.</p> <p>12 MS. DEITSCH-PEREZ: How long do you</p> <p>13 think you have for the rest of the</p> <p>14 deposition? What's your guess?</p> <p>15 MR. MORRIS: I would say more than</p> <p>16 an hour, less than two.</p> <p>17 MS. DEITSCH-PEREZ: Do you want to</p> <p>18 take a really short –</p> <p>19 THE WITNESS: Can we take a half</p> <p>20 hour, like 12:30 our time, 1:30 East Coast</p> <p>21 time?</p> <p>22 MR. MORRIS: Of course.</p> <p>23 THE WITNESS: Yeah. So, we'll take</p> <p>24 35 minutes, and then we'll get back to it.</p> <p>25 You know –</p>	<p style="text-align: right;">Page 205</p> <p>1 Dondero - 5-28-2021</p> <p>2 THE REPORTER: Are we still on the</p> <p>3 record, please?</p> <p>4 MR. MORRIS: Yes.</p> <p>5 COURT REPORTER: Okay.</p> <p>6 MS. DEITSCH-PEREZ: We'll –</p> <p>7 MR. MORRIS: If you have time</p> <p>8 constraints – if you have time</p> <p>9 constraints, Mr. Dondero, I'm prepared to</p> <p>10 keep going. I'll take a shorter break. I</p> <p>11 don't want – you know, I apologize for the</p> <p>12 burden, but these are relevant questions.</p> <p>13 THE WITNESS: Yeah, let's – let's</p> <p>14 do 35 minutes, and we will try and wrap it</p> <p>15 up in – like you're saying, like an hour</p> <p>16 or less than two.</p> <p>17 MR. MORRIS: Yeah.</p> <p>18 THE WITNESS: Yeah. I do need to be</p> <p>19 someplace in the early afternoon.</p> <p>20 MR. MORRIS: I assure you, I'll do</p> <p>21 my best to keep to that time frame.</p> <p>22 THE WITNESS: Okay. Thank you.</p> <p>23 THE REPORTER: And we're off the</p> <p>24 record.</p> <p>25 (Lunch recess held.)</p>
<p style="text-align: right;">Page 206</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: Can we put up the next</p> <p>3 exhibit, which I believe is Number 12?</p> <p>4 (Exhibit 12 introduced.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Okay. So, Mr. Dondero, these are</p> <p>7 interrogatories, and so I direct you first to</p> <p>8 the last page of the document, the Verification</p> <p>9 page.</p> <p>10 And is that your signature, sir?</p> <p>11 A. Yes.</p> <p>12 Q. Now, this wasn't notarized. Is</p> <p>13 there a reason why you didn't get this</p> <p>14 notarized?</p> <p>15 A. No.</p> <p>16 Q. Okay.</p> <p>17 MR. MORRIS: If we could just scroll</p> <p>18 back up.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. But is the Verification true –</p> <p>21 MR. MORRIS: If we just go back to</p> <p>22 it.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. At the time you signed this</p> <p>25 document, had you read the Defendant's</p>	<p style="text-align: right;">Page 207</p> <p>1 Dondero - 5-28-2021</p> <p>2 Objections and Answers to Highland Capital</p> <p>3 Management, L.P.'s Second Set of</p> <p>4 Interrogatories?</p> <p>5 A. Yes.</p> <p>6 Q. And did you believe that the facts</p> <p>7 stated therein were both within your personal</p> <p>8 knowledge and were true and correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we go to the</p> <p>12 substance of the document on page 4 of 6?</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Okay. So, in the answer to</p> <p>15 Interrogatory No. 1, you identify the</p> <p>16 conditions subsequent that were the subject of</p> <p>17 the agreement that we've been talking about</p> <p>18 that you and Nancy entered into.</p> <p>19 Do I have that right?</p> <p>20 A. Yes.</p> <p>21 Q. And to the best of your knowledge,</p> <p>22 does the answer that's set forth in response to</p> <p>23 Interrogatory No. 1 fully and accurately set</p> <p>24 forth the conditions subsequent that were the</p> <p>25 subject of the agreement?</p>

<p>Page 208</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. Repeat the question, please.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Does this answer to Interrogatory</p> <p>7 No. 1 set forth, to the best of your knowledge</p> <p>8 and understanding, the conditions subsequent</p> <p>9 that were part of the agreement that you and</p> <p>10 Nancy entered into in January or February 2019?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. Yes, large – yes, largely –</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Okay.</p> <p>16 A. – or yes.</p> <p>17 Q. Is there any aspect of this that you</p> <p>18 believe right now is incorrect?</p> <p>19 A. No.</p> <p>20 Q. Is there any aspect of your</p> <p>21 agreement with Nancy on the conditions</p> <p>22 subsequent that's not described in this answer?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. My recollection is that that largely</p>	<p>Page 209</p> <p>1 Dondero - 5-28-2021</p> <p>2 captures it.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Okay. There's a reference there to,</p> <p>5 quote, "the disposition of the portfolio</p> <p>6 company interests managed and/or owned directly</p> <p>7 or indirectly by Highland and/or its affiliates</p> <p>8 or managed funds."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. What does that refer to?</p> <p>12 A. Just, you know, MGM is owned in a</p> <p>13 variety of places, Comerstone is owned in a</p> <p>14 variety of places, and then Trussway is owned</p> <p>15 in a subsidiary of Highland.</p> <p>16 So there – I believe it's to</p> <p>17 capture the fact of the different ownerships or</p> <p>18 controls of those three different investments.</p> <p>19 Q. Are those the only portfolio company</p> <p>20 interests managed and/or directly or indirectly</p> <p>21 by Highland or its affiliates – withdrawn.</p> <p>22 That was bad.</p> <p>23 This answer doesn't refer</p> <p>24 specifically to any particular assets, correct?</p> <p>25 A. It does not.</p>
<p>Page 210</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Okay.</p> <p>3 A. Well, yeah. I think what the intent</p> <p>4 was – those three companies I just mentioned</p> <p>5 were always considered portfolio companies.</p> <p>6 There have been a few others over the years,</p> <p>7 but those are – those – I think they're</p> <p>8 trying to capture them that way, but I only</p> <p>9 remember talking to her about those three.</p> <p>10 Q. Are there any other portfolio</p> <p>11 company interests that are managed and/or owned</p> <p>12 directly or indirectly by Highland and/or its</p> <p>13 affiliates or managed funds? Are there any</p> <p>14 other assets?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. There were some lesser private</p> <p>18 equity investments or companies, yes.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Can you identify them?</p> <p>21 A. CCS Medical. I think OmniMax was</p> <p>22 one. Kerri International. Yeah, those –</p> <p>23 those are ones that come to mind.</p> <p>24 Q. Okay. But notwithstanding the</p> <p>25 answer here, to the best of your recollection,</p>	<p>Page 211</p> <p>1 Dondero - 5-28-2021</p> <p>2 the agreement that you had with Nancy pertained</p> <p>3 only to MGM, Comerstone, and Trussway. Do I</p> <p>4 have that right?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. The monetization of those three were</p> <p>8 the – were the conditions subsequent, yes.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. And there's a reference there</p> <p>11 to being disposed of, quote, on a favorable</p> <p>12 basis.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What does that mean?</p> <p>16 A. Above cost or book value.</p> <p>17 Q. How much above cost or book value</p> <p>18 would you have to dispose of MGM, Comerstone,</p> <p>19 and Trussway in order to trigger the conditions</p> <p>20 subsequent?</p> <p>21 A. There wasn't – there was just</p> <p>22 monetization on a favorable basis. There</p> <p>23 wasn't a specific amount on each individual</p> <p>24 one. It only took one to trigger it.</p> <p>25 Q. Oh. So the sale of any of those</p>

<p>Page 212</p> <p>1 Dondero - 5-28-2021</p> <p>2 three assets would trigger the conditions</p> <p>3 subsequent?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. And who decided whether the</p> <p>6 asset was sold on a favorable basis?</p> <p>7 Who made that decision, under your</p> <p>8 agreement with Nancy?</p> <p>9 A. It was just defined relative to</p> <p>10 cost, so it was just – it was just a</p> <p>11 factual – there's nothing to decide. It would</p> <p>12 just be a factual answer.</p> <p>13 Q. So, I just want to make sure I</p> <p>14 understand.</p> <p>15 Your agreement with Nancy was that</p> <p>16 –</p> <p>17 A. Yes.</p> <p>18 Q. – that – all right. Withdrawn.</p> <p>19 Your agreement with Nancy in January</p> <p>20 or February 2019, was that if any of MGM,</p> <p>21 Cornerstone, or Trussway was sold at cost, the</p> <p>22 debtor would forgive your obligations under the</p> <p>23 three notes.</p> <p>24 Do I have that right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 213</p> <p>1 Dondero - 5-28-2021</p> <p>2 form.</p> <p>3 A. If any of them were sold above cost,</p> <p>4 it would – monetization would trigger the –</p> <p>5 the three notes – forgiveness of the three</p> <p>6 notes, yes.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. And I just want to see if I</p> <p>9 can understand: Did you and Nancy discuss in</p> <p>10 January or February 2019 how much above cost</p> <p>11 the sale would have to be in order for the</p> <p>12 debtor to forgive your obligations under the</p> <p>13 three notes?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. No. It just had to be above cost,</p> <p>17 not a amount above cost.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay.</p> <p>20 A. Because just monetizing it – just</p> <p>21 monetizing it and getting liquidity for an</p> <p>22 illiquid investment, even if it was at cost, is</p> <p>23 good. So something above cost is great. And</p> <p>24 those are all big assets, and the notes were</p> <p>25 small.</p>
<p>Page 214</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Okay. So, again, I just want to</p> <p>3 really understand your agreement with Nancy.</p> <p>4 Did you and her specifically agree</p> <p>5 in January or February 2019 that if you sold</p> <p>6 either MGM or Cornerstone or Trussway for at</p> <p>7 least \$1 more than cost, then your obligations</p> <p>8 under the three notes would be forgiven?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. Before I answer that, I just – can</p> <p>12 you repeat so I can get all the subjects and</p> <p>13 participants straight in my head from the</p> <p>14 beginning of that question?</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Sure. Did you and Nancy agree in</p> <p>17 January or February 2019 that if Highland sold</p> <p>18 either MGM or Cornerstone or Trussway for an</p> <p>19 amount that was equal to at least \$1 more than</p> <p>20 cost, that – that Highland would forgive your</p> <p>21 obligations under the three notes?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I believe that is correct.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 215</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Thank you very much.</p> <p>3 Was Grant Scott the trustee of the</p> <p>4 Dugaboy trust in January or February 2019?</p> <p>5 A. He was at one point. I don't know</p> <p>6 if he was – I don't know when he was the</p> <p>7 trustee, but he got replaced at a – some point</p> <p>8 in time.</p> <p>9 Q. Do you know if it was before or</p> <p>10 after the petition date?</p> <p>11 A. Before or after the petition date.</p> <p>12 It was before the petition date.</p> <p>13 MR. MORRIS: Okay. I'd ask for the</p> <p>14 production of any documents that show that</p> <p>15 Nancy Dondero was the trustee of the</p> <p>16 Dugaboy trust in January or February 2019.</p> <p>17 MS. DEITSCH-PEREZ: I'll take your</p> <p>18 request under advisement.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Now, the last portion of</p> <p>21 Interrogatory No. 1, the answer to it, refers</p> <p>22 to a, quote, "basis wholly outside Dondero's</p> <p>23 control."</p> <p>24 Do you see that?</p> <p>25 A. Uh-huh.</p>

<p>Page 216</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Was that part of the agreement that</p> <p>3 you entered into with Nancy in January or</p> <p>4 February 2019?</p> <p>5 A. Yeah. It was probably unnecessary</p> <p>6 complexity, but yes.</p> <p>7 Q. Was there anything that you</p> <p>8 envisioned in January or February 2019 that</p> <p>9 would have caused you to lose control of</p> <p>10 Highland?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. No, and I wasn't – that wasn't the</p> <p>14 thought process.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. So what was the thought process?</p> <p>17 Why was that phrase part of – why –</p> <p>18 withdrawn.</p> <p>19 Did you include that – that aspect</p> <p>20 of the conditions subsequent – withdrawn.</p> <p>21 Who decided that one of the</p> <p>22 conditions subsequent would be the disposition</p> <p>23 of the assets that you've described, quote,</p> <p>24 "wholly outside of Dondero's control."</p> <p>25 Whose idea was it to put that into</p>	<p>Page 217</p> <p>1 Dondero - 5-28-2021</p> <p>2 the agreement?</p> <p>3 A. It was – it was mine. And, again,</p> <p>4 it was probably unnecessary complexity, but...</p> <p>5 Q. And why did you want that piece of</p> <p>6 it into the agreement?</p> <p>7 A. MGM ended up being a success story,</p> <p>8 but the value of MGM and the prospects of MGM</p> <p>9 have bounced around considerably over the last</p> <p>10 decade. And we never owned more than 17 or</p> <p>11 18 percent and there was a 32 percent holder,</p> <p>12 and Carl Icahn was involved at different points</p> <p>13 in time. There was definitely a chance that,</p> <p>14 over our objections, it could have been sold at</p> <p>15 a lower price without our support.</p> <p>16 And as far as Cornerstone was</p> <p>17 concerned, there was a half or a majority that</p> <p>18 was in the Restoration Fund that had a whole</p> <p>19 bunch of outside investors in it; and,</p> <p>20 theoretically, that could have been sold</p> <p>21 without our – or against our recommendations.</p> <p>22 So it was really meant to capture</p> <p>23 those two possibilities.</p> <p>24 Q. Did you tell Frank Waterhouse at any</p> <p>25 time about your agreement with Nancy that's</p>
<p>Page 218</p> <p>1 Dondero - 5-28-2021</p> <p>2 subject to the conditions subsequent referred</p> <p>3 to here in Interrogatory No. 1?</p> <p>4 A. I don't know if Frank knew the</p> <p>5 specifics. I think Frank really was aware that</p> <p>6 the loans could and would likely be forgiven</p> <p>7 and – yes. That's all to that answer.</p> <p>8 Q. Did you tell him that?</p> <p>9 A. Yes, and – I mean, partly he knew</p> <p>10 it from the history of Highland, and the</p> <p>11 structure of the notes are structured in a way</p> <p>12 that facilitates forgiveness.</p> <p>13 MR. MORRIS: I move to strike.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Did you ever tell Frank Waterhouse</p> <p>16 about the agreement that you reached with</p> <p>17 Nancy?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Not – not the specifics.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Did you ever mention anything about</p> <p>23 any aspect of your agreement to Nancy – with</p> <p>24 Nancy to Frank Waterhouse?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 219</p> <p>1 Dondero - 5-28-2021</p> <p>2 form.</p> <p>3 A. I – listen, I don't – I don't</p> <p>4 remember talking to him about the specifics,</p> <p>5 but, in general, I – he – he – he was deeply</p> <p>6 involved in the thought process and the</p> <p>7 conclusion that the notes were forgiven or</p> <p>8 going to be for- --</p> <p>9 MR. MORRIS: I'm going to move to</p> <p>10 strike.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. And I'm not asking you to get into</p> <p>13 his head to tell me what you think he knew.</p> <p>14 I'm asking you about what you told him.</p> <p>15 Did you ever tell Mr. Waterhouse</p> <p>16 that you reached an agreement with Nancy</p> <p>17 pursuant to which the debtor had agreed not to</p> <p>18 collect on the notes subject to the conditions</p> <p>19 subsequent set forth in your answer to</p> <p>20 Interrogatory No. 1?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. I don't remember. I – I don't</p> <p>24 remember enough to say conclusively one way or</p> <p>25 the other.</p>

<p>Page 220</p> <p>1 Dondero - 5-28-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Do you have any recollection of</p> <p>4 telling any employee at Highland at any time of</p> <p>5 your agreement with Nancy?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. I – I don't know.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Okay. Did you tell anybody employed</p> <p>11 or representing the debtor at any time of your</p> <p>12 agreement with Nancy?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Not that I – not that I recall.</p> <p>16 Again, I didn't think there was a reason to,</p> <p>17 initially.</p> <p>18 MR. MORRIS: Can we go to</p> <p>19 Exhibit 13, please?</p> <p>20 (Exhibit 13 introduced.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. All right. When you were the CEO,</p> <p>23 did PricewaterhouseCoopers serve as Highland's</p> <p>24 auditors?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 221</p> <p>1 Dondero - 5-28-2021</p> <p>2 form.</p> <p>3 A. At different times they were, and</p> <p>4 then KPMG was. I don't remember who it was in</p> <p>5 '17.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. And it's a fact, is it not,</p> <p>8 that until at least year-end 2018, Highland had</p> <p>9 audited the financial statements prepared for</p> <p>10 itself, right?</p> <p>11 A. I don't know. I wasn't aware they</p> <p>12 stopped.</p> <p>13 Q. Okay. Okay.</p> <p>14 So, I'm putting up on the screen the</p> <p>15 "Consolidated Financial Statements and</p> <p>16 Supplemental Information" for the period</p> <p>17 December 31st, 2017.</p> <p>18 Do you see that?</p> <p>19 A. Uh-huh.</p> <p>20 MR. MORRIS: And if we can go first</p> <p>21 to the page marked 33470, which is, I</p> <p>22 think, the –</p> <p>23 And is this – does this refresh</p> <p>24 your recollection that PWC served as</p> <p>25 Highland's independent auditors for the</p>
<p>Page 222</p> <p>1 Dondero - 5-28-2021</p> <p>2 financial statements prepared for the year</p> <p>3 ending December 31st, 2017?</p> <p>4 MR. MORRIS: If you could scroll</p> <p>5 down to the bottom of the page so</p> <p>6 Mr. Dondero can see the date.</p> <p>7 A. Okay.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Do you see that?</p> <p>10 A. If you're asking me to agree that it</p> <p>11 was Pricewaterhouse, yes, I agree.</p> <p>12 Q. And do you see that they signed</p> <p>13 their letter on May 18th, 2018? Do you see</p> <p>14 that?</p> <p>15 A. Yeah.</p> <p>16 Q. And do you see, towards the top of</p> <p>17 the page, there's a statement about</p> <p>18 "Management's Responsibility for the</p> <p>19 Consolidated Financial Statements"?</p> <p>20 A. Yes.</p> <p>21 Q. And that's a pretty standard clause</p> <p>22 that auditors include in audited financial</p> <p>23 statements, in your experience; isn't that</p> <p>24 right?</p> <p>25 A. Yes.</p>	<p>Page 223</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: Can we go to the</p> <p>3 page – the next page, 3471?</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. This is the Consolidated Balance</p> <p>6 Sheet for the period December 31, 2017, and</p> <p>7 it's been redacted except to show "Notes and</p> <p>8 other amounts due from affiliates." Do you see</p> <p>9 that?</p> <p>10 A. Uh-huh.</p> <p>11 Q. When you were the CEO, did Highland</p> <p>12 carry the Notes and Other Amounts Due from</p> <p>13 Affiliates as assets on its balance sheet?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And that's what's reflected</p> <p>16 on this page; is that correct?</p> <p>17 A. I mean, that's what the heading</p> <p>18 says, yes.</p> <p>19 Q. Okay.</p> <p>20 MR. MORRIS: Can we go to Bates</p> <p>21 number 33499.</p> <p>22 (Scrolling.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. And you're aware, are you not, that</p> <p>25 in the Notes to the financial statements, PWC</p>



<p>Page 224</p> <p>1 Dondero - 5-28-2021</p> <p>2 described all of the notes and other amounts</p> <p>3 that were due to affiliates – due from</p> <p>4 affiliates?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. Yes.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And were you aware that in the</p> <p>10 financial statements prepared for Highland for</p> <p>11 the period ending December 31st, 2017, that PWC</p> <p>12 included in its notes amounts due from Highland</p> <p>13 Capital Management Fund Advisors, L.P.?</p> <p>14 A. The 0.2 million in the first</p> <p>15 sentence, is that your question?</p> <p>16 Q. Yes. You know, the whole – who at</p> <p>17 Highland was responsible for providing</p> <p>18 information to PWC relating to Notes and Other</p> <p>19 Amounts Due from Affiliates?</p> <p>20 A. The accounting department.</p> <p>21 Q. And who was the head of the</p> <p>22 accounting department as of the end of 2017?</p> <p>23 A. Frank Waterhouse.</p> <p>24 Q. And did Frank Waterhouse remain the</p> <p>25 head of the accounting department until at</p>	<p>Page 225</p> <p>1 Dondero - 5-28-2021</p> <p>2 least the end of 2020, to the best of your</p> <p>3 knowledge?</p> <p>4 A. Yes.</p> <p>5 Q. And when did Frank Waterhouse become</p> <p>6 the head of the accounting department?</p> <p>7 A. A few years earlier.</p> <p>8 Q. So, to the best of your</p> <p>9 recollection, Frank Waterhouse has been the</p> <p>10 head of the accounting department on a</p> <p>11 continuous basis from the period approximately</p> <p>12 2015 until the end of 2020; is that right?</p> <p>13 A. If not earlier, but yes. But I</p> <p>14 don't know the dates.</p> <p>15 Q. Okay.</p> <p>16 MR. MORRIS: Can we scroll down to</p> <p>17 the next to the last paragraph there, the</p> <p>18 one that refers to Mr. Dondero? There you</p> <p>19 go.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Do you see that, according to this</p> <p>22 financial report, you "did not issue any new</p> <p>23 promissory notes to the Partnership" during the</p> <p>24 year 2017?</p> <p>25 A. Yeah.</p>
<p>Page 226</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. And to the best of your</p> <p>3 recollection, was that accurate?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And to the best of your</p> <p>6 recollection, was it also accurate that as of</p> <p>7 the end of 2017, the total interest and</p> <p>8 principal due on an – on outstanding</p> <p>9 promissory notes was approximately 14 and a</p> <p>10 half million dollars and was payable in annual</p> <p>11 installments throughout the term of the note?</p> <p>12 A. Yes.</p> <p>13 Q. And prior to your execution of the</p> <p>14 demand notes, do you recall that you had made,</p> <p>15 in favor of Highland, certain term notes?</p> <p>16 A. I don't – I don't recall.</p> <p>17 Q. Do you remember having to make</p> <p>18 payments to Highland to satisfy the terms of</p> <p>19 any notes prior to 2018?</p> <p>20 A. I can't recall. I didn't refresh –</p> <p>21 I didn't refresh myself on anything else, on</p> <p>22 any other notes for this deposition.</p> <p>23 Q. Okay. But looking at this</p> <p>24 paragraph, is there anything about it that you</p> <p>25 currently believe is inaccurate or incorrect?</p>	<p>Page 227</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. I – I don't know. I don't know.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Okay. We can scroll through the</p> <p>7 entire page, if you would like, but I just –</p> <p>8 I'll ask the question first, and then you tell</p> <p>9 me what you need to read.</p> <p>10 Do you recall whether</p> <p>11 PricewaterhouseCoopers' audited financial</p> <p>12 statements ever disclosed the forgiveness of</p> <p>13 any loan ever made by Highland to you or any of</p> <p>14 its employees?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. I don't – I don't know.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Do you have a recollection of any?</p> <p>20 A. I don't have a recollection –</p> <p>21 recollection of any. As a CPA, I'm not sure</p> <p>22 it's required until it's forgiven, but I'm not</p> <p>23 the expert. I can't remember seeing it or not</p> <p>24 seeing it.</p> <p>25 Q. Did the debtor make –</p>

<p style="text-align: right;">Page 228</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: You know what? Let's</p> <p>3 look – let's look at each of these. We</p> <p>4 can start with the bottom of the page.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Can you identify any of the makers</p> <p>7 of the notes that are referred to in this</p> <p>8 section that are not directly or indirectly</p> <p>9 owned or controlled by you, other than</p> <p>10 Mr. Okada?</p> <p>11 So, if we start at the top, is</p> <p>12 Highland Capital Management Fund Advisors,</p> <p>13 L.P., an entity that is either directly or</p> <p>14 indirectly owned or controlled by you?</p> <p>15 A. Yes.</p> <p>16 Q. NexPoint Advisors, L.P., the next</p> <p>17 paragraph, is that an entity that is directly</p> <p>18 or indirectly owned or controlled by you?</p> <p>19 A. Yes.</p> <p>20 Q. HCRE Partners, LLC, is that an</p> <p>21 entity that is directly or indirectly owned or</p> <p>22 controlled by you?</p> <p>23 A. Yes.</p> <p>24 Q. Highland Capital Management</p> <p>25 Services, Inc., is that an entity that is</p>	<p style="text-align: right;">Page 229</p> <p>1 Dondero - 5-28-2021</p> <p>2 directly or indirectly owned or controlled by</p> <p>3 you?</p> <p>4 A. Yes.</p> <p>5 Q. All right. And you're the subject</p> <p>6 of the next paragraph, right?</p> <p>7 The next paragraph relates to Mark</p> <p>8 Okada. Are you aware of any loan that was ever</p> <p>9 made by Highland to Mr. Okada that was</p> <p>10 forgiven?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay.</p> <p>13 MR. MORRIS: Can we go to the next</p> <p>14 paragraph, please?</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. There's a reference to The Dugaboy</p> <p>17 Investment Trust. Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Either your sister or Mr. Scott have</p> <p>20 served as the sole trustee of Dugaboy since the</p> <p>21 time it was created; is that correct?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I – I don't know.</p> <p>25 BY MR. MORRIS:</p>
<p style="text-align: right;">Page 230</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Do you recall anybody at any time</p> <p>3 serving as the trustee of The Dugaboy</p> <p>4 Investment Trust other than Nancy or Mr. Scott?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. I – I don't remember.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Are you the lifetime beneficiary of</p> <p>10 The Dugaboy Investment Trust?</p> <p>11 A. Yes.</p> <p>12 Q. And have you been – withdrawn.</p> <p>13 Are you the sole lifetime</p> <p>14 beneficiary of The Dugaboy Investment Trust?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. I believe so.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Okay. And has that been true since</p> <p>20 the time The Dugaboy Investment Trust was</p> <p>21 created?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't know for sure.</p> <p>25 BY MR. MORRIS:</p>	<p style="text-align: right;">Page 231</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Okay. The next paragraph refers to</p> <p>3 a Contribution Agreement. Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Are you familiar who the affiliated</p> <p>6 trust is that entered into the Contribution</p> <p>7 Agreement?</p> <p>8 A. No. I'm willing to be refreshed,</p> <p>9 but I don't remember.</p> <p>10 Q. Is it the Hunter Mountain Investment</p> <p>11 Trust?</p> <p>12 A. It could be.</p> <p>13 Q. Can you think of any other</p> <p>14 affiliated trust other than Hunter Mountain who</p> <p>15 carried a note receivable in the amount of</p> <p>16 \$63 million due to the partnership?</p> <p>17 A. No.</p> <p>18 Q. Do you directly or indirectly own or</p> <p>19 control the Hunter Mountain Trust?</p> <p>20 A. No.</p> <p>21 Q. Let's go – do you have any interest</p> <p>22 in the Hunter Mountain Trust?</p> <p>23 A. No.</p> <p>24 Q. Directly or indirectly?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 232</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: Can we go to 33510,</p> <p>3 please?</p> <p>4 (Scrolling.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Just to refresh your recollection,</p> <p>7 PricewaterhouseCoopers's letter is dated</p> <p>8 May 18th, 2018.</p> <p>9 And you see there, note 16 refers to</p> <p>10 "Subsequent Events." Do you see that?</p> <p>11 A. Yep.</p> <p>12 Q. So, sometime between January 1st and</p> <p>13 May 18, 2018, which is the report date,</p> <p>14 PricewaterhouseCoopers is disclosing that you</p> <p>15 issued promissory notes in the amount of</p> <p>16 \$11.7 million. Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Do you believe that was true and</p> <p>19 accurate at the time? Is that your</p> <p>20 recollection?</p> <p>21 A. Yes.</p> <p>22 Q. Now, of the three notes that we</p> <p>23 looked at, only one of them was issued before</p> <p>24 May 18, 2018. That was the 2 and a half</p> <p>25 million-dollar note.</p>	<p style="text-align: right;">Page 233</p> <p>1 Dondero - 5-28-2021</p> <p>2 Do you remember that?</p> <p>3 I apologize. Withdrawn.</p> <p>4 That was the 3.825 million-dollar</p> <p>5 note.</p> <p>6 Do you remember that?</p> <p>7 A. Okay. Yes.</p> <p>8 Q. Okay. So, if that note was 3. –</p> <p>9 let's just call it roughly \$3.9 million, does</p> <p>10 that mean that there were \$7.8 million of other</p> <p>11 notes that you made in favor of Highland during</p> <p>12 the first five months of 2018?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Yeah, I think you got the wrong –</p> <p>16 well, you're – I'm not the accounting</p> <p>17 department. I'm not the auditor. My comment</p> <p>18 would be our financial statements have always</p> <p>19 been – our audited financial statements have</p> <p>20 always been extremely accurate and</p> <p>21 Pricewaterhouse and KPMG literally do a hundred</p> <p>22 percent sampling of all transactions.</p> <p>23 Everything is reflected accurately in the</p> <p>24 financials, and there's no missing note or</p> <p>25 misstated note or unequal amount, or whatever.</p>
<p style="text-align: right;">Page 234</p> <p>1 Dondero - 5-28-2021</p> <p>2 And I refuse to go in that direction just</p> <p>3 because I don't know the details.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. I appreciate that, sir, and I didn't</p> <p>6 mean to take you into that direction. I'm just</p> <p>7 asking you if you know what accounts for the</p> <p>8 difference between the \$11.7 million stated and</p> <p>9 the 3.825 million-dollar note that we looked at</p> <p>10 as Exhibit Number 1 that was tendered by you on</p> <p>11 February 2nd, 2018. That's all.</p> <p>12 A. I – I don't know. I have no – I</p> <p>13 have no idea.</p> <p>14 Q. Okay. In the course of the audit,</p> <p>15 you personally sign management representation</p> <p>16 letters, right?</p> <p>17 A. Usually at the end.</p> <p>18 Q. Yeah.</p> <p>19 MR. MORRIS: So can we call the next</p> <p>20 exhibit up, please?</p> <p>21 (Exhibit 14 introduced.)</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. And happy to take a look at it. I'm</p> <p>24 going to point you to a couple of things.</p> <p>25 MR. MORRIS: But if we could go to</p>	<p style="text-align: right;">Page 235</p> <p>1 Dondero - 5-28-2021</p> <p>2 the document, it's page 9 of the document,</p> <p>3 Bates number 33408. All right.</p> <p>4 And scroll up to the prior page,</p> <p>5 please. Just looking for the signatures.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. All right. Is that your signature</p> <p>8 there, sir?</p> <p>9 A. Yeah.</p> <p>10 Q. And did you sign this management</p> <p>11 representation letter on behalf of Highland in</p> <p>12 your capacity as the Strand Advisors, Inc.,</p> <p>13 general partner on or about May 18th, 2018?</p> <p>14 A. Yeah.</p> <p>15 Q. And Frank Waterhouse, is that -- do</p> <p>16 you know that to be his signature below?</p> <p>17 A. It resembles it, yes.</p> <p>18 Q. Okay. Do you have an understanding</p> <p>19 of why you signed this document?</p> <p>20 A. Despite all their auditing and</p> <p>21 double-checking of all source information,</p> <p>22 they – they want a validation from management,</p> <p>23 also.</p> <p>24 Q. And is that standard and customary,</p> <p>25 to the best of your experience?</p>

<p>Page 236</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 MR. MORRIS: Can we go back to the</p> <p>5 first page, please?</p> <p>6 (Scrolling.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Do you see in the second paragraph,</p> <p>9 the last sentence, there's a reference to</p> <p>10 "materiality"?</p> <p>11 MR. MORRIS: If you can just scroll</p> <p>12 down a bit.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. And it says, quote, "Materiality</p> <p>15 used for purposes of these representations is</p> <p>16 \$2,000,000."</p> <p>17 Am I reading that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. And did you understand that Highland</p> <p>20 was to provide to PWC, so that it could prepare</p> <p>21 the audited financial statements with</p> <p>22 information relating to issues and transactions</p> <p>23 that were material, using that definition?</p> <p>24 A. Yes.</p> <p>25 MR. MORRIS: Let's go to the next</p>	<p>Page 237</p> <p>1 Dondero - 5-28-2021</p> <p>2 document.</p> <p>3 (Exhibit 15 introduced.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. These are the audited financials for</p> <p>6 the period ending December 31st, 2018.</p> <p>7 MR. MORRIS: And if you could go to</p> <p>8 the third page, the one ending in 33424.</p> <p>9 No, above. Yeah, right there.</p> <p>10 Do you see PricewaterhouseCoopers</p> <p>11 signed the audit letter on June 3rd, 2019?</p> <p>12 A. Yep.</p> <p>13 MR. MORRIS: And if we can scroll up</p> <p>14 to the top of the page, it has the same</p> <p>15 statement concerning "Management's</p> <p>16 Responsibility for the Consolidated</p> <p>17 Financial Statements" that we looked at</p> <p>18 earlier in the 2017 audit, correct?</p> <p>19 A. Yes.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Okay. And that's – looking at it,</p> <p>22 that's customary language that auditors include</p> <p>23 in audited financial statements, correct?</p> <p>24 A. Yep.</p> <p>25 MR. MORRIS: Can we go to the next</p>
<p>Page 238</p> <p>1 Dondero - 5-28-2021</p> <p>2 page, please?</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Again, you'll see that this is the</p> <p>5 Consolidated Balance Sheet for the period</p> <p>6 ending December 31st, 2018. Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. And is it accurate that Highland</p> <p>9 continued to carry on its balance sheet as an</p> <p>10 asset all "Notes and Other Amounts Due from</p> <p>11 Affiliates"?</p> <p>12 A. Yes.</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. And you knew – you knew at the time</p> <p>17 that the audited financials were finalized that</p> <p>18 Highland was carrying on its balance sheet</p> <p>19 "Notes and Other Amounts Due from Affiliates,"</p> <p>20 correct?</p> <p>21 A. Yup.</p> <p>22 Q. Did you personally tell anybody at</p> <p>23 PWC in connection with the preparation of the</p> <p>24 audited financial statements for 2018 that you</p> <p>25 had entered into the agreement with your sister</p>	<p>Page 239</p> <p>1 Dondero - 5-28-2021</p> <p>2 Nancy in January or February of 2019?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 A. Not that I recall.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Do you know if anybody told PWC,</p> <p>8 prior to the completion of the audited</p> <p>9 financial statements for the period ending</p> <p>10 December 31st, 2018, of your agreement with</p> <p>11 Nancy?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Not that I know of.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you ever instruct anybody to</p> <p>17 inform PWC about the agreement you reached with</p> <p>18 Nancy in –</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. – January –</p> <p>23 MR. MORRIS: Please let me finish</p> <p>24 the question.</p> <p>25 MS. DEITSCH-PEREZ: You took a</p>

<p>Page 240</p> <p>1 Dondero - 5-28-2021</p> <p>2 breath. Sorry.</p> <p>3 MR. MORRIS: Are you finished?</p> <p>4 MS. DEITSCH-PEREZ: Yes. As I</p> <p>5 explained, you took a breath, and I thought</p> <p>6 you were done. Sorry.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Did you ever instruct anybody to</p> <p>9 inform PWC of your agreement that you reached</p> <p>10 with Nancy in January or February 2019?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. No.</p> <p>14 MR. MORRIS: Can you please go to</p> <p>15 page 33451?</p> <p>16 (Scrolling.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. And we've got the "Notes and Other</p> <p>19 Amounts Due from Affiliates." We had gone</p> <p>20 through all of this before and I'm not going to</p> <p>21 do it again, but I do want to ask you, sir:</p> <p>22 Did you personally approve and authorize each</p> <p>23 of the notes that are reflected in the PWC</p> <p>24 disclosure concerning Notes and Other Amounts</p> <p>25 Due from Affiliates?</p>	<p>Page 241</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: Object to the</p> <p>3 form.</p> <p>4 A. Repeat the question.</p> <p>5 Did I personally approve? Was that</p> <p>6 the question or --</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Yes. Withdrawn.</p> <p>9 I'll ask a different question.</p> <p>10 And I'm happy to give you the time</p> <p>11 needed to look at the full disclosure, but are</p> <p>12 you aware of any note or other amount due from</p> <p>13 affiliate that you didn't approve and</p> <p>14 authorize?</p> <p>15 A. I'm not aware.</p> <p>16 MR. MORRIS: Okay. If we could just</p> <p>17 focus in on that bottom paragraph relating</p> <p>18 to Mr. Dondero.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. So there's a reference there to your</p> <p>21 having "issued promissory notes to the</p> <p>22 Partnership in the aggregate amount of</p> <p>23 \$14.9 million" during 2018.</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>
<p>Page 242</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. That would include the three notes</p> <p>3 at issue in this lawsuit; is that right?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. (No response.)</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Let me ask a different question.</p> <p>9 The three -- the three notes at</p> <p>10 issue in this lawsuit were all issued in 2018,</p> <p>11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you have a recollection as</p> <p>14 to what notes account for the difference</p> <p>15 between the \$8.8 million or so that's at issue</p> <p>16 in this lawsuit and the \$14.9 million</p> <p>17 referenced in this disclosure?</p> <p>18 A. I don't, other than that -- I</p> <p>19 believe the audit is accurate and, you know,</p> <p>20 there could have been principle or interest</p> <p>21 paydowns. I don't know the reason for the</p> <p>22 difference.</p> <p>23 Q. This disclosure, as it pertains to</p> <p>24 you, doesn't mention any oral agreement, does</p> <p>25 it?</p>	<p>Page 243</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. No.</p> <p>3 Q. And it doesn't mention any amendment</p> <p>4 to any of the notes, correct?</p> <p>5 A. No.</p> <p>6 Q. It doesn't describe any conditions</p> <p>7 that have been placed on the collectability of</p> <p>8 the notes from you, correct?</p> <p>9 A. No.</p> <p>10 Q. It doesn't state that the notes</p> <p>11 might be forgiven upon some conditions</p> <p>12 subsequent, correct?</p> <p>13 A. No, it does not.</p> <p>14 MR. MORRIS: Can we turn to</p> <p>15 page 33461, please?</p> <p>16 (Scrolling.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. And these are "Subsequent Events,"</p> <p>19 and I just want to look through them --</p> <p>20 withdrawn.</p> <p>21 You understand that these financial</p> <p>22 statements are for the period ending</p> <p>23 December 31st, 2018, correct?</p> <p>24 A. Yes.</p> <p>25 Q. And the agreement that you reached</p>

<p>Page 244</p> <p>1 Dondero - 5-28-2021</p> <p>2 with Nancy, to the best of your recollection,</p> <p>3 occurred in January or February 2019, correct?</p> <p>4 (Simultaneous conversation.)</p> <p>5 A. Yes –</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 THE REPORTER: I didn't hear an</p> <p>9 answer.</p> <p>10 A. Repeat the question again, just in</p> <p>11 case.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Sure. The agreement that you – the</p> <p>14 agreement that you reached with Nancy on behalf</p> <p>15 of Highland was an agreement that was reached</p> <p>16 in January or February 2019, correct?</p> <p>17 A. Was in – the last was in January or</p> <p>18 February of '19, yes. Yes.</p> <p>19 Q. Okay. So I just want to show you</p> <p>20 the entirety of the "Subsequent Events" because</p> <p>21 they cover the period from December 31st, 2018,</p> <p>22 until the report date of June 3, 2019.</p> <p>23 MR. MORRIS: If we could just look</p> <p>24 at that.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 245</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Is there any reference made to the</p> <p>3 agreement that you reached with Nancy in</p> <p>4 January or February 2019?</p> <p>5 A. No.</p> <p>6 MS. DEITSCH-PEREZ: And I just want</p> <p>7 to object for the record that we asked the</p> <p>8 debtor for all of the Highland financial –</p> <p>9 audited financial statements. We got</p> <p>10 highly redacted ones where the debtor has</p> <p>11 clearly left unredacted only those things</p> <p>12 it wanted to use while denying Mr. Dondero</p> <p>13 the unredacted copies. So we do not have</p> <p>14 here, for him to look at, the unredacted</p> <p>15 Highland audited financial statements.</p> <p>16 MR. MORRIS: But this is the only</p> <p>17 portion of the document – well, I'm not</p> <p>18 going to argue.</p> <p>19 MS. DEITSCH-PEREZ: Yes. You showed</p> <p>20 us what you wanted to show him in an</p> <p>21 unredacted (audio distortion) gave him</p> <p>22 fully redacted copies. I understand that.</p> <p>23 MR. MORRIS: Yeah, and I'll be happy</p> <p>24 to submit a unredacted copy to the Judge</p> <p>25 under seal so that she can see whether or</p>
<p>Page 246</p> <p>1 Dondero - 5-28-2021</p> <p>2 not there's any other aspect of the</p> <p>3 financial statements that –</p> <p>4 MS. DEITSCH-PEREZ: That's fine.</p> <p>5 MR. MORRIS: – pertain to the</p> <p>6 notes.</p> <p>7 Give me a break. Stop.</p> <p>8 MS. DEITSCH-PEREZ: I know.</p> <p>9 Litigation isn't a one-way – one-way</p> <p>10 disco.</p> <p>11 MR. MORRIS: Okay. All right.</p> <p>12 The next document, please.</p> <p>13 THE WITNESS: How are we doing on</p> <p>14 time?</p> <p>15 MR. MORRIS: We're doing pretty</p> <p>16 well. I think we're going to fit within –</p> <p>17 we're not quite an hour back on, but I'm</p> <p>18 confident that we'll fit within the one- to</p> <p>19 two-hour – we'll be done within an hour.</p> <p>20 That's my point.</p> <p>21 THE WITNESS: Okay. I'm going to</p> <p>22 give a hard stop at 2:00. Okay?</p> <p>23 MR. MORRIS: You can do whatever you</p> <p>24 want. If we're not finished, we'll just</p> <p>25 have to figure out a time to come back. So</p>	<p>Page 247</p> <p>1 Dondero - 5-28-2021</p> <p>2 let's get through as much as we can, and</p> <p>3 we'll see where we are.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. The next document is the management</p> <p>6 representation letter.</p> <p>7 (Exhibit 16 introduced.)</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And I would just ask you to look at,</p> <p>10 I guess, page 33419 and just confirm for me</p> <p>11 that that's your signature.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And this contains the same</p> <p>14 representations that you made to PWC that we</p> <p>15 looked at in the earlier management rep letter,</p> <p>16 right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Let's look at the next</p> <p>19 document, please.</p> <p>20 (Exhibit 17 introduced.)</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. So PWC issues the audited financials</p> <p>23 in June of 2019, and then Highland files for</p> <p>24 bankruptcy in October.</p> <p>25 Do I have that right?</p>



<p>Page 248</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. And at the time Highland filed for</p> <p>4 bankruptcy, you were the president and CEO of</p> <p>5 Highland, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And you personally authorized</p> <p>8 Highland's bankruptcy filing, correct?</p> <p>9 A. On Pachulski's recommendation.</p> <p>10 Q. But you're the only person who</p> <p>11 authorized the filing; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And did you understand – you have</p> <p>14 familiarity with bankruptcy proceedings, right?</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form.</p> <p>17 A. Not this kind of bankruptcy, but,</p> <p>18 yes, we have experience in bankruptcies.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. And you had experience in the Acis</p> <p>21 bankruptcy, for example, correct?</p> <p>22 A. Yes.</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 249</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. And you understand that debtors in</p> <p>3 bankruptcy have to make certain disclosures; is</p> <p>4 that right?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. You can answer.</p> <p>9 A. Yes.</p> <p>10 Q. And you understand that the purpose</p> <p>11 of the disclosures is to give interested</p> <p>12 parties an opportunity to review the financial</p> <p>13 information relating to the debtors, right?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. Generally.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. The debtor is supposed to be</p> <p>19 transparent. Is that a statement you would</p> <p>20 agree with?</p> <p>21 A. I'd agree the debtor is supposed to</p> <p>22 be.</p> <p>23 Q. So, are you aware that the debtor</p> <p>24 filed certain schedules in connection with the</p> <p>25 bankruptcy case?</p>
<p>Page 250</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. I'm sure they filed many schedules.</p> <p>3 Q. And did you – did you review the</p> <p>4 debtor's schedules before they were filed?</p> <p>5 A. No.</p> <p>6 Q. All right. So, here is a summary of</p> <p>7 the debtor's assets and liabilities that was</p> <p>8 filed in December – on December 12th, 2019.</p> <p>9 Do you see the timeline at the top?</p> <p>10 A. Yes.</p> <p>11 Q. And you were still in control of the</p> <p>12 debtor at that time, correct?</p> <p>13 A. Yep.</p> <p>14 Q. And was Mr. Waterhouse responsible</p> <p>15 for preparing the debtor's Summary of Assets</p> <p>16 and Liabilities on behalf of Highland at that</p> <p>17 time?</p> <p>18 A. I – I don't know whether DSI was in</p> <p>19 control at that point. I don't know.</p> <p>20 Q. Did DSI rely on Mr. Waterhouse and</p> <p>21 the accounting team for the information that</p> <p>22 was used to create the debtor's disclosures?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 BY MR. MORRIS:</p>	<p>Page 251</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Withdrawn.</p> <p>3 To the best of your knowledge, did</p> <p>4 DSI rely on Mr. Waterhouse and the accounting</p> <p>5 team at Highland in order to prepare the</p> <p>6 debtor's schedules and financial disclosures?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. I don't know.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Did you ever discuss with</p> <p>12 Mr. Waterhouse the debtor's financial</p> <p>13 disclosures during the bankruptcy case?</p> <p>14 A. Nope.</p> <p>15 Q. Did you ever look at the Summary of</p> <p>16 Assets and Liabilities that was filed with the</p> <p>17 Court in December 2019?</p> <p>18 A. Nope.</p> <p>19 MR. MORRIS: Turn to the second</p> <p>20 page, please. Let's just go down right –</p> <p>21 right there.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Do you see in part 11 – part 11</p> <p>24 pertains to all other assets and in Item</p> <p>25 Number 71, there's a reference to "Notes</p>

<p>Page 252</p> <p>1 Dondero - 5-28-2021</p> <p>2 Receivable."</p> <p>3 A. Yep.</p> <p>4 Q. And do you see that the Notes</p> <p>5 Receivable are for an aggregate amount of</p> <p>6 approximately \$150 million?</p> <p>7 A. Yep.</p> <p>8 Q. And it refers to Exhibit D. Do you</p> <p>9 see that?</p> <p>10 A. Yes.</p> <p>11 Q. All right.</p> <p>12 MR. MORRIS: Can we turn – go to</p> <p>13 the next page?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. And exhibit – this page is Exhibit</p> <p>16 D.</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. And this shows an aggregate amount</p> <p>20 of – the face amount of notes to be the same</p> <p>21 \$150.3 million that we just saw, correct?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. We can go back and look, if you</p>	<p>Page 253</p> <p>1 Dondero - 5-28-2021</p> <p>2 want.</p> <p>3 A. It seems to tie.</p> <p>4 Q. Okay. And it was disclosed on the</p> <p>5 docket in the bankruptcy case that you</p> <p>6 personally had made Notes Receivable</p> <p>7 outstanding in the approximate amount of</p> <p>8 \$9.3 million. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 MR. MORRIS: Can we just go to the</p> <p>12 top? I want to just show the date.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. It's December 13. That's the date</p> <p>15 that this disclosure is made. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And there's a footnote there, number</p> <p>18 [1], that says "Doubtful or Uncollectible</p> <p>19 accounts are evaluated at year end." Do you</p> <p>20 see that?</p> <p>21 A. Yes.</p> <p>22 Q. Now, nothing on this document shows</p> <p>23 any of the notes as being doubtful or</p> <p>24 uncollectible, correct?</p> <p>25 A. Correct.</p>
<p>Page 254</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Do you know if the debtor's</p> <p>3 schedules were ever amended after</p> <p>4 December 13th, 2019, to reflect "Doubtful or</p> <p>5 Uncollectible" Notes Receivable?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. Yeah. I believe the Hunter Mountain</p> <p>9 56 was written off.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Okay. Anything else?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. I – I don't know.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Okay. Did you ever ask anyone to</p> <p>17 amend the debtor's schedules to reflect any</p> <p>18 Doubtful or Uncollectible receivable that's set</p> <p>19 forth on this page?</p> <p>20 A. I did not.</p> <p>21 Q. Okay.</p> <p>22 MR. MORRIS: La Asia, I'm actually</p> <p>23 going to just skip the next exhibit. And</p> <p>24 if we could go to the one that you and I</p> <p>25 had marked as 19. We'll just mark it as 18</p>	<p>Page 255</p> <p>1 Dondero - 5-28-2021</p> <p>2 for purposes of the deposition.</p> <p>3 MS. DEITSCH-PEREZ: I think that's</p> <p>4 confusing. I don't mind if you just mark</p> <p>5 18 as "omitted." I would want a sheet with</p> <p>6 "18 omitted." That way, your numbering can</p> <p>7 stay the same.</p> <p>8 MR. MORRIS: Okay. That's fine.</p> <p>9 Thank you. So we'll mark 18 as "omitted",</p> <p>10 and this will be 19.</p> <p>11 (Exhibit 19 introduced.)</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you aware of – that the debtor</p> <p>14 filed disclosures called Statements of</p> <p>15 Financial Affairs, often referred to as SoFAs?</p> <p>16 A. I've heard of the form before, yes.</p> <p>17 Q. Did you ever review the debtor's</p> <p>18 SoFAs?</p> <p>19 A. No.</p> <p>20 Q. So, do you know who was responsible</p> <p>21 at Highland for preparing the debtor's SoFAs?</p> <p>22 A. No.</p> <p>23 Q. Would it have been – would –</p> <p>24 whoever it was, would that person have either</p> <p>25 been or reported to Frank Waterhouse, as the</p>

<p>Page 256</p> <p>1 Dondero - 5-28-2021</p> <p>2 CFO?</p> <p>3 A. I'm sorry. Can you repeat that one</p> <p>4 more time?</p> <p>5 Q. I appreciate the fact that you</p> <p>6 don't – you can't identify the person who</p> <p>7 prepared the SoFAs; but within the</p> <p>8 organizational structure of Highland during the</p> <p>9 time that you were the CEO, would the person</p> <p>10 have been either Frank Waterhouse or somebody</p> <p>11 who reported to Frank Waterhouse?</p> <p>12 A. Or DSI.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can we go to page 2,</p> <p>15 please.</p> <p>16 (Scrolling.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you see at number 4 here, there's</p> <p>19 a reference to payments made to insiders within</p> <p>20 a year of the bankruptcy case?</p> <p>21 A. Yup.</p> <p>22 Q. Are you aware – withdrawn.</p> <p>23 Were you aware in December 2019 that</p> <p>24 Highland was going to disclose all payments</p> <p>25 made to insiders within a year of the</p>	<p>Page 257</p> <p>1 Dondero - 5-28-2021</p> <p>2 bankruptcy case?</p> <p>3 A. No.</p> <p>4 MR. MORRIS: Let's go to page 19 of</p> <p>5 34, please.</p> <p>6 (Scrolling.)</p> <p>7 MR. MORRIS: If we could, scroll</p> <p>8 down near the bottom.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You'll see that there's two entries</p> <p>11 for Highland Capital Management Fund Advisors.</p> <p>12 Do you see that?</p> <p>13 A. Yup.</p> <p>14 Q. And in May 2019, the debtor paid</p> <p>15 Highland Capital Management Fund Advisors the</p> <p>16 aggregate amount of \$7.4 million. Am I reading</p> <p>17 that correctly?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And those payments were – in</p> <p>20 exchange for those payments, Highland received</p> <p>21 two promissory notes, correct?</p> <p>22 MS. DEITSCH-PEREZ: John, I'm going</p> <p>23 to object. You're straying from the</p> <p>24 subject of this adversary and going into</p> <p>25 another, and I'm really not comfortable</p>
<p>Page 258</p> <p>1 Dondero - 5-28-2021</p> <p>2 with that since he's only prepared for</p> <p>3 his – his – for this proceeding and has</p> <p>4 not refreshed himself on anything else.</p> <p>5 So, this is outside of what the scope of</p> <p>6 this deposition ought to be.</p> <p>7 MR. MORRIS: Okay. So you have two</p> <p>8 choices, Deborah: You can either state</p> <p>9 your objection, "beyond the scope," or you</p> <p>10 can direct the witness not to answer.</p> <p>11 Which would you like to do?</p> <p>12 MS. DEITSCH-PEREZ: I am going to</p> <p>13 state my objection that it's beyond the</p> <p>14 scope, but I'm asking you because – as a</p> <p>15 matter of fairness, that you restrain</p> <p>16 yourself and limit your deposition to this</p> <p>17 adversary proceeding –</p> <p>18 MR. MORRIS: Okay. I appreciate –</p> <p>19 MS. DEITSCH-PEREZ: – and not –</p> <p>20 (Simultaneous conversation.)</p> <p>21 MS. DEITSCH-PEREZ: And if the</p> <p>22 witness isn't prepared to answer these</p> <p>23 questions, it's not fair that you proceed</p> <p>24 on them.</p> <p>25 MR. MORRIS: Okay. So I'll just say</p>	<p>Page 259</p> <p>1 Dondero - 5-28-2021</p> <p>2 that for a couple of questions to ask the</p> <p>3 former CEO about a 7.4 million-dollar</p> <p>4 payment made to an affiliate that he owns</p> <p>5 or controls, I'm going to ask you to give</p> <p>6 me a little latitude.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Mr. Dondero, were those two payments</p> <p>9 backed up by promissory notes in favor of the</p> <p>10 debtor, to the best of your knowledge?</p> <p>11 A. I don't know.</p> <p>12 Q. Okay.</p> <p>13 MR. MORRIS: Let's go to the next</p> <p>14 page, please.</p> <p>15 Can we go towards the middle of the</p> <p>16 page. Right there. That's fine.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you see your name, James Dondero,</p> <p>19 there?</p> <p>20 A. Yes.</p> <p>21 Q. And you were paid \$3.75 million</p> <p>22 within a year of the bankruptcy, correct?</p> <p>23 A. Yes.</p> <p>24 Q. Who determined that you should –</p> <p>25 who made the decision for Highland to pay you</p>

<p>Page 260</p> <p>1 Dondero - 5-28-2021</p> <p>2 that amount?</p> <p>3 A. Me? I don't know.</p> <p>4 Q. Is there anybody else who had the</p> <p>5 authority to determine your compensation prior</p> <p>6 to the petition date, other than yourself?</p> <p>7 A. Especially – besides myself –</p> <p>8 okay. Let me answer that question first.</p> <p>9 The Class A – majority Class A</p> <p>10 holders can, and then I can.</p> <p>11 Q. Anybody else?</p> <p>12 A. Not that – not that I know.</p> <p>13 Q. In practice, did anybody other than</p> <p>14 you set your compensation?</p> <p>15 A. In practice, yes, sometimes majority</p> <p>16 Class A did.</p> <p>17 Q. And at any time prior to the</p> <p>18 petition date, can you think of an instance</p> <p>19 where the majority of the Class A refused to</p> <p>20 compensate you in the manner in which you</p> <p>21 wanted?</p> <p>22 A. There was – no, because there was</p> <p>23 no reason to because there was plenty of head</p> <p>24 room in all the agreements and compared to</p> <p>25 market levels.</p>	<p>Page 261</p> <p>1 Dondero - 5-28-2021</p> <p>2 MR. MORRIS: Let's go to the next</p> <p>3 document, please.</p> <p>4 (Exhibit 20 introduced.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Are you aware that, during the</p> <p>7 course of the bankruptcy proceeding, the</p> <p>8 debtor, in addition to the schedules and SoFAs,</p> <p>9 also filed every month a document called the</p> <p>10 "Monthly Operating Report"?</p> <p>11 A. I'm not aware, specifically.</p> <p>12 Q. Did you ever review any of the</p> <p>13 debtor's Monthly Operating Reports?</p> <p>14 A. Not that I can recall.</p> <p>15 Q. Okay.</p> <p>16 MR. MORRIS: We can scroll down a</p> <p>17 bit.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. You see there's – there's two</p> <p>20 signatures here: One electronic, one</p> <p>21 handwritten, both dated December 2nd. Do you</p> <p>22 see that Brad Sharp has signed as an authorized</p> <p>23 individual as the Chief Restructuring Officer?</p> <p>24 A. Yup.</p> <p>25 Q. Okay. And then below that, there's</p>
<p>Page 262</p> <p>1 Dondero - 5-28-2021</p> <p>2 the electronic signature of Mr. Waterhouse. Do</p> <p>3 you see?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Were – to the best of your</p> <p>6 knowledge as the CEO at the time, were</p> <p>7 Mr. Sharp and Mr. Waterhouse authorized to sign</p> <p>8 and file Monthly Operating Reports with the</p> <p>9 Court?</p> <p>10 A. Again, it's not my sphere of</p> <p>11 knowledge. It looks like – individually or</p> <p>12 jointly, I – I don't have a comment.</p> <p>13 Q. I'm just asking you, as the CEO, did</p> <p>14 you expect Mr. Waterhouse and Mr. Sharp to take</p> <p>15 care of all financial disclosures required</p> <p>16 under the bankruptcy code?</p> <p>17 A. Yes.</p> <p>18 Q. And did you expect them to do that</p> <p>19 completely, transparently and accurately?</p> <p>20 A. Yes.</p> <p>21 Q. Do you have any reason to believe</p> <p>22 that they failed to do so?</p> <p>23 A. Not that I'm aware.</p> <p>24 MR. MORRIS: Can we go to page 6 of</p> <p>25 11?</p>	<p>Page 263</p> <p>1 Dondero - 5-28-2021</p> <p>2 (Scrolling.)</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. You haven't seen this document</p> <p>5 before; is that right?</p> <p>6 A. I do not believe so.</p> <p>7 Q. Okay. But you see that it was filed</p> <p>8 in late January 2020, but it was signed in</p> <p>9 December, right?</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. And do you see that among the</p> <p>12 assets listed are amounts "Due from</p> <p>13 affiliates"?</p> <p>14 A. Yep.</p> <p>15 Q. And do you have any reason to</p> <p>16 believe that the amounts due from affiliates</p> <p>17 are anything other than the same notes and</p> <p>18 amounts due that we saw in the audited</p> <p>19 financial statements?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. I don't know.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Okay.</p> <p>25 THE WITNESS: I do look at this and</p>

<p>Page 264</p> <p>1 Dondero - 5-28-2021</p> <p>2 get wistful. You guys should be ashamed of</p> <p>3 yourselves, what you've done to this</p> <p>4 company.</p> <p>5 MR. MORRIS: I move to strike.</p> <p>6 Can we take a look at footnote (1),</p> <p>7 please?</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Do you see that it "Includes various</p> <p>10 notes receivable at carrying value"?</p> <p>11 Do you have any understanding of</p> <p>12 what that –</p> <p>13 MS. DEITSCH-PEREZ: You didn't state</p> <p>14 the whole sentence, John. Please, if</p> <p>15 you're going to point him to things, read</p> <p>16 him the whole sentence.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Sir, do you have any understanding</p> <p>19 as to what footnote (1) refers to or means?</p> <p>20 A. It says what it says.</p> <p>21 Q. Okay.</p> <p>22 MR. MORRIS: Let's look at the next</p> <p>23 document, please.</p> <p>24 (Exhibit 21 introduced.)</p> <p>25 MR. MORRIS: All right. So if you</p>	<p>Page 265</p> <p>1 Dondero - 5-28-2021</p> <p>2 could just stop right there.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. This is the Monthly Operating Report</p> <p>5 for the period ending November 2019. Do you</p> <p>6 see that?</p> <p>7 A. Yes.</p> <p>8 MR. MORRIS: Can we scroll down a</p> <p>9 bit?</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. And that's Mr. Sharp's and</p> <p>12 Mr. Waterhouse's signatures, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Do you see on this version,</p> <p>15 Mr. Sharp is identified as the "Responsible</p> <p>16 Party," but Mr. Waterhouse is identified as the</p> <p>17 "Preparer"?</p> <p>18 A. Yes.</p> <p>19 Q. Do you recall ever telling Mr.</p> <p>20 Waterhouse, in his capacity as the preparer of</p> <p>21 Monthly Operating Reports, that there was</p> <p>22 anything inaccurate in any Monthly Operating</p> <p>23 Report filed by the debtor?</p> <p>24 A. No.</p> <p>25 Q. Do you recall ever telling</p>
<p>Page 266</p> <p>1 Dondero - 5-28-2021</p> <p>2 Mr. Sharp, as the responsible party, that there</p> <p>3 was anything inaccurate in any monthly –</p> <p>4 Monthly Operating Report filed by the debtor?</p> <p>5 A. No.</p> <p>6 MR. MORRIS: Can we go to the next</p> <p>7 page, please?</p> <p>8 (Scrolling.)</p> <p>9 THE WITNESS: I'm going to give the</p> <p>10 12-minute warning here. I can be back at</p> <p>11 4:00, but I'm going to need a couple hours.</p> <p>12 MR. MORRIS: I'm trying to finish</p> <p>13 up, okay?</p> <p>14 THE WITNESS: Okay.</p> <p>15 MR. MORRIS: I'd rather not come</p> <p>16 back, to be honest with you.</p> <p>17 Can we go to the next page, please?</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Again, the debtor reported that the</p> <p>20 amounts due from affiliates were assets of the</p> <p>21 debtor's estate, correct?</p> <p>22 A. Yep.</p> <p>23 Q. Do you – do you have any issue with</p> <p>24 the fact that the debtor reported the notes,</p> <p>25 including your own notes, as assets of the</p>	<p>Page 267</p> <p>1 Dondero - 5-28-2021</p> <p>2 estate?</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 A. Until they're forgiven, they're bona</p> <p>6 fide notes.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. And you don't think the "conditions</p> <p>9 subsequent" agreement that you entered into</p> <p>10 with Nancy calls into question whether the</p> <p>11 debtor would ever recover on their notes that</p> <p>12 you issued to them?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Again, I don't believe it's material</p> <p>16 or GAAP, is my understanding.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Well, almost a third of the debtor's</p> <p>19 assets are notes "Due from affiliates," right?</p> <p>20 A. You have to back out Hunter</p> <p>21 Mountain, and you have to back out – you have</p> <p>22 to back out about 80 million to get to the 70</p> <p>23 million of affiliated notes; and then, from</p> <p>24 there, you have to back out 60 of them to get</p> <p>25 to the 9 million.</p>

<p>Page 268</p> <p>1 Dondero - 5-28-2021</p> <p>2 MS. DEITSCH-PEREZ: Mr. Morris,</p> <p>3 please don't make faces at Mr. Dondero.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Why – why are we backing out Hunter</p> <p>6 Mountain?</p> <p>7 A. I think the Hunter Mountain – there</p> <p>8 were notes going both ways, but I think the</p> <p>9 Hunter Mountain is out of the estate, I</p> <p>10 believe.</p> <p>11 Q. But Hunter Mountain – the debtor</p> <p>12 held notes that were made by Hunter Mountain in</p> <p>13 the approximate amount of \$60 million, right?</p> <p>14 A. But subsequent to these dates, I</p> <p>15 think – I think they realized it was just a</p> <p>16 cross-transaction. There were dues and</p> <p>17 payables that were essentially equal from</p> <p>18 Hunter Mountain, so I think Hunter Mountain</p> <p>19 came out of that.</p> <p>20 Q. Isn't it – isn't it a fact that</p> <p>21 they wrote them off because they didn't believe</p> <p>22 they were collectible?</p> <p>23 A. Yeah, because the payment on those</p> <p>24 notes depended upon Highland honoring its</p> <p>25 agreements to Hunter Mountain, which Highland</p>	<p>Page 269</p> <p>1 Dondero - 5-28-2021</p> <p>2 had no intention of doing. So, there's no</p> <p>3 ability for Hunter Mountain to pay Highland.</p> <p>4 Q. Does Highland – does Hunter</p> <p>5 Mountain today have the ability to pay back any</p> <p>6 of the \$60 million that it – that was</p> <p>7 reflected in the notes?</p> <p>8 MS. DEITSCH-PEREZ: Object.</p> <p>9 A. No, not that I know of but –</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Okay.</p> <p>12 MS. DEITSCH-PEREZ: And, Mr. Morris,</p> <p>13 once again, I think we're straying from</p> <p>14 this adversary.</p> <p>15 MR. MORRIS: Can we go to page 5 of</p> <p>16 9, please?</p> <p>17 (Scrolling.)</p> <p>18 MR. MORRIS: Above that, I think.</p> <p>19 Next page, 5 of 9. We must be looking at</p> <p>20 the wrong exhibit.</p> <p>21 Is the one that was marked 22? No,</p> <p>22 it's the next – I believe it's the next</p> <p>23 document.</p> <p>24 Let's pull up the next document,</p> <p>25 please.</p>
<p>Page 270</p> <p>1 Dondero - 5-28-2021</p> <p>2 (Exhibit 22 introduced.)</p> <p>3 MR. MORRIS: Yeah, that's it.</p> <p>4 Go to page 5, please. Thank you.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Do you see that box there? It says</p> <p>7 "Non-Operating Receipts - Other."</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And do you understand that</p> <p>10 that shows that, in December 2019, while you</p> <p>11 were still personally in control of the debtor,</p> <p>12 that certain payments of "principle or</p> <p>13 interest" were made with respect to notes made</p> <p>14 in favor of the debtor?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. And do you understand that</p> <p>17 the one dated December 23rd in the approximate</p> <p>18 amount of \$783,000, that was a payment that was</p> <p>19 made by you?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. If you say so. I don't have a basis</p> <p>23 for denying it or confirming it.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Okay. But it's true, you do recall</p>	<p>Page 271</p> <p>1 Dondero - 5-28-2021</p> <p>2 that in December 2019, after the petition date,</p> <p>3 while you were still in control of the debtor,</p> <p>4 that certain payments of principal and interest</p> <p>5 were made on notes that were made in favor of</p> <p>6 the debtor, correct?</p> <p>7 MS. DEITSCH-PEREZ: Asked – asked</p> <p>8 and answered about an hour ago.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. You can answer, sir.</p> <p>11 A. I believe – I believe so.</p> <p>12 Q. Thank you. Do you recall that in</p> <p>13 connection with its Plan and Disclosure</p> <p>14 Statement, that the debtor prepared a</p> <p>15 Liquidation Analysis?</p> <p>16 A. Yes.</p> <p>17 MR. MORRIS: Can we call the next</p> <p>18 document up on the screen, please?</p> <p>19 (Exhibit 23 introduced.)</p> <p>20 MR. MORRIS: And if we can go to the</p> <p>21 next page.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Your lawyers and lawyers acting on</p> <p>24 behalf of entities you own and control or</p> <p>25 otherwise have an interest spent considerable</p>



<p>Page 272</p> <p>1 Dondero - 5-28-2021</p> <p>2 time on the debtor's Liquidation Analysis and</p> <p>3 confirmation.</p> <p>4 Do you remember that?</p> <p>5 A. I can't – I can't agree or disagree</p> <p>6 with that.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Okay. Did you personally review the</p> <p>9 debtor's Liquidation Analysis?</p> <p>10 A. Briefly.</p> <p>11 Q. Okay.</p> <p>12 MR. MORRIS: Can we go to the next</p> <p>13 page, please?</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Do you see that this page contains a</p> <p>16 list of "Assumptions"?</p> <p>17 A. Yes.</p> <p>18 MR. MORRIS: And can we scroll up a</p> <p>19 little further so we can see the date?</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. You'll see that on November 24th,</p> <p>22 2020, the debtor filed a Liquidation Analysis</p> <p>23 that contained, as among the Assumptions,</p> <p>24 quote, "All demand notes are collected in the</p> <p>25 year 2021." Do you see that?</p>	<p>Page 273</p> <p>1 Dondero - 5-28-2021</p> <p>2 A. Yes.</p> <p>3 Q. Did you or anybody acting on your</p> <p>4 behalf ever inform the Court that you believed</p> <p>5 that assumption was unreasonable?</p> <p>6 A. I – I don't know, but I know we've</p> <p>7 been fighting the notes consistently through</p> <p>8 various mechanisms.</p> <p>9 Q. Okay. Did you or anybody acting on</p> <p>10 your behalf ever inform the Court of your</p> <p>11 agreement with Nancy?</p> <p>12 MS. DEITSCH-PEREZ: Object to the</p> <p>13 form.</p> <p>14 A. Not – not that I know of.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you ever instruct anybody to</p> <p>17 inform the Court that you had an agreement with</p> <p>18 Nancy that rendered Assumption C unreasonable?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I did not.</p> <p>22 MR. MORRIS: Let's look at the last</p> <p>23 document, please.</p> <p>24 (Exhibit 24 introduced.)</p> <p>25 BY MR. MORRIS:</p>
<p>Page 274</p> <p>1 Dondero - 5-28-2021</p> <p>2 Q. Do you recall that there came a time</p> <p>3 just prior to the confirmation hearing that the</p> <p>4 debtor amended its Liquidation Analysis?</p> <p>5 A. No. Okay. Yes.</p> <p>6 MR. MORRIS: Okay. And if we could</p> <p>7 go to the next page.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. You'll see at the bottom right-hand</p> <p>10 corner it's dated January 28th, 2021.</p> <p>11 MR. MORRIS: We wanted page up but</p> <p>12 just – yeah, page up, the assumptions.</p> <p>13 Yeah, right there.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. You see it's dated January 28, 2021?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And let's look at Assumption</p> <p>18 C. It's been amended somewhat.</p> <p>19 And it now says, quote: "All demand</p> <p>20 notes are collected in the year 2021; 3 term</p> <p>21 notes defaulted and have been demanded based on</p> <p>22 default provisions; payment estimated in 2021."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Did you or anybody on your behalf</p>	<p>Page 275</p> <p>1 Dondero - 5-28-2021</p> <p>2 ever inform the Court that this assumption was</p> <p>3 unreasonable?</p> <p>4 MS. DEITSCH-PEREZ: Object to the</p> <p>5 form.</p> <p>6 A. Yes. Well, Lynn wrote a letter to</p> <p>7 all the counsels, which I think ended up being</p> <p>8 put in the Court record, that the notes were</p> <p>9 all subject to defenses and could not be</p> <p>10 considered unencumbered, I think, if they're</p> <p>11 sold, or whatever. He was – he was – he –</p> <p>12 he realized the attitude towards the notes had</p> <p>13 shifted, and he penned something to everybody</p> <p>14 and to make the notes so that they couldn't be</p> <p>15 sold without notifying people that there were</p> <p>16 good defenses to them.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Did you or anybody acting on your</p> <p>19 behalf ever challenge this assumption in</p> <p>20 connection with the debtor's confirmation</p> <p>21 hearing?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form, asked and answered.</p> <p>24 A. Yeah. I think Lynn's letter</p> <p>25 objected to that vehemently. It was just</p>

<p>Page 276</p> <p>1 Dondero - 5-28-2021</p> <p>2 ignored.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you know anything else --</p> <p>5 anything else you're aware of?</p> <p>6 A. I think that's powerful enough.</p> <p>7 Q. That's not my question, sir. My</p> <p>8 question is: Are you aware of any other facts</p> <p>9 that you're relying upon to answer my question</p> <p>10 as to whether or not you or anybody acting on</p> <p>11 your behalf informed the Court that Assumption</p> <p>12 C is unreasonable?</p> <p>13 MS. DEITSCH-PEREZ: Object to the</p> <p>14 form.</p> <p>15 A. Just the Lynn letter. I have no</p> <p>16 other specific awareness.</p> <p>17 MR. MORRIS: Thank you very much. I</p> <p>18 have no further questions. Thank you so</p> <p>19 much, folks. Been a pleasure.</p> <p>20 MS. DEITSCH-PEREZ: Reserve until</p> <p>21 trial.</p> <p>22 (Time Noted: 1:59 p.m.)</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 277</p> <p>1 Dondero - 5-28-2021</p> <p>2 CERTIFICATE</p> <p>3 STATE OF TEXAS )</p> <p>4 )</p> <p>5 COUNTY OF ELLIS )</p> <p>6 I, Daniel J. Skur, a Notary Public</p> <p>7 within and for the State of Texas, do</p> <p>8 hereby certify:</p> <p>9 That JAMES DONDERO, the witness whose</p> <p>10 deposition is hereinbefore set forth, was</p> <p>11 duly sworn by me and that such deposition</p> <p>12 is a true record of the testimony given by</p> <p>13 such witness.</p> <p>14 That pursuant to Rule 30 of the Federal</p> <p>15 Rules of Civil Procedure, signature of the</p> <p>16 witness was not reserved by the witness or</p> <p>17 other party before the conclusion of the</p> <p>18 deposition;</p> <p>19 I further certify that I am not</p> <p>20 related to any of the parties to this</p> <p>21 action by blood or marriage; and that I am</p> <p>22 in no way interested in the outcome of this</p> <p>23 matter.</p> <p>24 IN WITNESS WHEREOF, I have hereunto</p> <p>25 set my hand this 28th day of May, 2021.</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> 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## **EXHIBIT 97**

Dondero - 6-1-2021

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

In Re: )  
 )  
HIGHLAND CAPITAL ) Case No.  
MANAGEMENT, LP, ) 19-34054 L.P.  
 ) Chapter 11  
Debtor, )  
 )  
HIGHLAND CAPITAL MANAGEMENT, )  
LP, )  
 )  
Plaintiff, ) Adversary No.  
 ) 21-03003-sgi  
vs. )  
 )  
JAMES D. DONDERO, )  
 )  
Defendant. )

REMOTE DEPOSITION OF  
JAMES DONDERO

Volume 3

Pages 283 - 385

Dallas, Texas

Tuesday, 1st day of June, 2021

Reported by:

Daniel J. Skur, Notary Public and CSR

Job No. 194691

<p>1 Dondero - 6-1-2021</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7 1st day of June, 2021</p> <p>8 9:34 a.m. - 12:01 p.m.</p> <p>9</p> <p>10</p> <p>11 Remote Deposition of JAMES DONDERO,</p> <p>12 located in Dallas, Texas before Daniel J.</p> <p>13 Skur, Notary Public and Certified Shorthand</p> <p>14 Reporter in and for the State of Texas</p> <p>15 located in Waxahachie, Texas.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 284</p> <p>1 Dondero - 6-1-2021</p> <p>2 REMOTE APPEARANCES:</p> <p>3 Pachulski Stang Ziehl &amp; Jones</p> <p>4 Attorney(s) for Debtor</p> <p>5 780 Third Avenue</p> <p>6 New York, New York 10017</p> <p>7 BY: John Morris, Esq.</p> <p>8 Gregory Demo, Esq.</p> <p>9</p> <p>10 Sidley Austin</p> <p>11 Attorney(s) for The Committee</p> <p>12 2021 McKinney Avenue</p> <p>13 Dallas, Texas 75201</p> <p>14 BY: Paige Montgomery, Esq.</p> <p>15 Juliana Hoffman, Esq.</p> <p>16 Matthew Clemente, Esq.</p> <p>17 Alyssa Russell, Esq.</p> <p>18</p> <p>19 Kelly Hart &amp; Pitre</p> <p>20 Attorney(s) for Mark Patrick</p> <p>21 400 Poydras Street</p> <p>22 New Orleans, Louisiana 70130</p> <p>23 BY: Amelia Hurt, Esq.</p> <p>24</p> <p>25 Bonds Ellis Eppich Schafer Jones</p> <p>26 Attorney(s) for The Witness</p> <p>27 420 Throckmorton Street</p> <p>28 Fort Worth, Texas 76102</p> <p>29 BY: Clay Taylor, Esq.</p> <p>30</p>
<p>1 Dondero - 6-1-2021</p> <p>2</p> <p>3 REMOTE APPEARANCES (continued)</p> <p>4 Sbaiti &amp; Company</p> <p>5 Attorney(s) for Charitable DAF, CLO HoldCo</p> <p>6 and Sbaiti &amp; Company</p> <p>7 2200 Ross Avenue</p> <p>8</p> <p>9 Dallas, Texas 75201</p> <p>10</p> <p>11 BY: Mazin Sbaiti, Esq.</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 286</p> <p>1 Dondero - 6-1-2021</p> <p>2 IT IS HEREBY STIPULATED AND AGREED</p> <p>3 by and between the attorneys for the respective</p> <p>4 parties herein, that filing and sealing be and</p> <p>5 the same are hereby waived.</p> <p>6 IT IS FURTHER STIPULATED AND AGREED</p> <p>7 that all objections, except as to the form of</p> <p>8 the question, shall be reserved to the</p> <p>9 time of the trial.</p> <p>10 IT IS FURTHER STIPULATED AND AGREED</p> <p>11 that the within deposition may be sworn to and</p> <p>12 signed before any officer authorized to</p> <p>13 administer an oath, with the same force and</p> <p>14 effect as if signed and sworn to before the</p> <p>15 Court.</p> <p>16 - oOo -</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 287</p>	<p>Page 285</p>



<p>Page 288</p> <p>1 Dondero - 6-1-2021</p> <p>2 PROCEEDINGS</p> <p>3 REMOTE ORAL DEPOSITION OF</p> <p>4 JAMES DONDERO</p> <p>5 (REPORTER NOTE: This deposition is</p> <p>6 being conducted remotely in accordance with</p> <p>7 the Current Emergency Order regarding the</p> <p>8 COVID-19 State of Disaster.</p> <p>9 Today's date is the 1st day of</p> <p>10 June, 2021. The time is 9:34 a.m. Daylight</p> <p>11 Savings Time. The witness is located in</p> <p>12 Dallas, Texas.)</p> <p>13 JAMES DONDERO,</p> <p>14 having been duly cautioned and sworn to tell</p> <p>15 the truth, the whole truth and nothing but the</p> <p>16 truth, testified as follows:</p> <p>17 (9:33 A.M.)</p> <p>18 EXAMINATION</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Good morning, Mr. Dondero. Can you</p> <p>21 hear me?</p> <p>22 A. Yes.</p> <p>23 Q. Your microphone is a little soft as</p> <p>24 well.</p> <p>25 Can you tell me where you're located</p>	<p>Page 289</p> <p>1 Dondero - 6-1-2021</p> <p>2 right now?</p> <p>3 A. 4940 Chase Tower.</p> <p>4 (Interruption by reporter.)</p> <p>5 (Pause.)</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Good morning, Mr. Dondero.</p> <p>8 (Audio distortion.)</p> <p>9 (Interruption by reporter.) 00:01</p> <p>10 BY MR. MORRIS: 00:01</p> <p>11 Q. Good morning, Mr. Dondero.</p> <p>12 Can you hear me now?</p> <p>13 A. Yes.</p> <p>14 Q. You understand we're here today for</p> <p>15 your deposition in connection with next week's</p> <p>16 contempt proceeding; is that right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. We have a few documents to</p> <p>19 put up on the screen today; and as usual, if</p> <p>20 there's anything that you need to see, will you</p> <p>21 let me know that?</p> <p>22 A. Yes.</p> <p>23 Q. All right. I want to start with</p> <p>24 some background.</p> <p>25 MR. MORRIS: Can we please put up</p>
<p>Page 290</p> <p>1 Dondero - 6-1-2021</p> <p>2 the first exhibit, the organizational</p> <p>3 chart?</p> <p>4 MR. TAYLOR: John, before we start,</p> <p>5 I just wanted to note that this is going to</p> <p>6 be limited to two hours.</p> <p>7 MR. MORRIS: I'm not sure where you</p> <p>8 get that from, but let's just proceed.</p> <p>9 MR. TAYLOR: You specifically asked</p> <p>10 for two hours of time, and I told you we'd</p> <p>11 give two hours of time, and so we're</p> <p>12 limiting it to two hours.</p> <p>13 MR. MORRIS: You do whatever you</p> <p>14 need to do, Clay.</p> <p>15 (Exhibit 1 introduced.)</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Mr. Dondero, have you seen this</p> <p>18 document before, sir?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know what it is?</p> <p>21 A. It's the org chart of the DAF and</p> <p>22 CLO HoldCo.</p> <p>23 Q. Do you know why this structure was</p> <p>24 set up the way it was?</p> <p>25 MR. TAYLOR: Objection, form.</p>	<p>Page 291</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. Only generally.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Can you tell me your general</p> <p>5 understanding of why this structure was set up</p> <p>6 the way it was?</p> <p>7 A. To be compliant for tax purposes.</p> <p>8 Q. Was this structure set up at your</p> <p>9 request?</p> <p>10 MR. TAYLOR: Objection, form.</p> <p>11 A. Set up at my request. No.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Who decided to set up this</p> <p>14 structure; do you know?</p> <p>15 A. Mark Patrick.</p> <p>16 Q. And do you know if anybody asked</p> <p>17 Mark Patrick to set up this structure?</p> <p>18 A. The -- he was tasked with setting up</p> <p>19 a charitable entity for Highland at that time,</p> <p>20 for Highland and my -- for Highland and the</p> <p>21 partners to -- to foster charitable giving and</p> <p>22 provide the appropriate tax deductions for</p> <p>23 such.</p> <p>24 Q. And who gave him that task, if you</p> <p>25 know?</p>

<p>Page 292</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. I believe I did.</p> <p>3 Q. Okay. So, you tasked Mr. Patrick</p> <p>4 with setting up an organizational structure to</p> <p>5 carry out the charitable giving on behalf of</p> <p>6 Highland Capital Management, L.P., and its</p> <p>7 partners?</p> <p>8 Do I have that right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Looking at the top line, do</p> <p>11 you see that there's four foundations that are</p> <p>12 identified as third parties?</p> <p>13 A. Yes.</p> <p>14 Q. Are you familiar with those</p> <p>15 foundations?</p> <p>16 A. Yes.</p> <p>17 Q. And do you serve as an officer or</p> <p>18 director of any of those foundations?</p> <p>19 A. I – I believe I have or I could be</p> <p>20 with regard to Dallas Foundation, but I'm not</p> <p>21 certain.</p> <p>22 Q. Okay. Do you know if you have any</p> <p>23 role with any of the other three foundations</p> <p>24 that are on there?</p> <p>25 A. I do not believe so.</p>	<p>Page 293</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Okay. Looking at the next row,</p> <p>3 there's four incorporated or there's four</p> <p>4 entities that are identified as supporting</p> <p>5 organizations.</p> <p>6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have an understanding of what</p> <p>9 a "supporting organization" is?</p> <p>10 A. No, and I don't know the difference</p> <p>11 between that first line and the second line,</p> <p>12 and I don't know if my involvement with Dallas</p> <p>13 Foundation was at the first line or the second</p> <p>14 line.</p> <p>15 Q. Do you know when Mr. Patrick set up</p> <p>16 this structure?</p> <p>17 A. Many years ago at the beginning of</p> <p>18 the – I don't think it's changed over the</p> <p>19 years. As far as I know, the general – or</p> <p>20 this – this structure was put in place at the</p> <p>21 beginning, I believe, sometime in the late</p> <p>22 2000s.</p> <p>23 Q. Do you know what the Donor Advised</p> <p>24 Funds are, the DAF funds?</p> <p>25 MR. SBAITI: I'm going to object to</p>
<p>Page 294</p> <p>1 Dondero - 6-1-2021</p> <p>2 the form of the question.</p> <p>3 John, if you could be clear as to</p> <p>4 which line – are you talking about</p> <p>5 charitable DAF HoldCo, or are you talking</p> <p>6 about charitable DAF Fund, L.P.?</p> <p>7 MR. TAYLOR: If you could be as</p> <p>8 specific as possible, and he'll try to</p> <p>9 answer as specifically as possible. I'm</p> <p>10 not sure which box you're talking about.</p> <p>11 MR. MORRIS: All right, Clay. Thank</p> <p>12 you.</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Mr. Dondero, are you familiar with</p> <p>15 the phrase "DAF"?</p> <p>16 A. Yes.</p> <p>17 Q. Have you used that phrase before?</p> <p>18 A. Yes.</p> <p>19 Q. When you refer to – when you use</p> <p>20 the phrase "DAF," what are you referring to?</p> <p>21 A. It would depend.</p> <p>22 Q. On what?</p> <p>23 A. What the question is.</p> <p>24 Q. What's – do you have an</p> <p>25 understanding of what the Charitable DAF GP,</p>	<p>Page 295</p> <p>1 Dondero - 6-1-2021</p> <p>2 LLC, is?</p> <p>3 A. The exact structural differences,</p> <p>4 I – I – I – I don't know.</p> <p>5 Q. So when you use the phrase "DAF,"</p> <p>6 what are you referring to?</p> <p>7 A. In general, when I use the</p> <p>8 expression, it's the – the overall entity, the</p> <p>9 overall pool of capital and/or the overall</p> <p>10 entity that makes the donations from the pool</p> <p>11 of capital.</p> <p>12 Q. And which entity – withdrawn.</p> <p>13 Do you have an understanding as to</p> <p>14 which entity holds the pool of capital?</p> <p>15 A. No. It's – no, I don't know for</p> <p>16 sure.</p> <p>17 Q. Do you know if it's CLO HoldCo,</p> <p>18 Ltd.?</p> <p>19 MR. SBAITI: Objection, asked and</p> <p>20 answered.</p> <p>21 A. I don't know.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Do you know if Charitable DAF Fund,</p> <p>24 L.P., holds any assets?</p> <p>25 MR. SBAITI: Objection, relevance,</p>

<p>Page 296</p> <p>1 Dondero - 6-1-2021</p> <p>2 no foundation.</p> <p>3 A. I – I don't know which entities</p> <p>4 hold which of the assets.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Did you – did you approve of the</p> <p>7 organizational structure that Mr. Patrick</p> <p>8 created at your request?</p> <p>9 A. Yes.</p> <p>10 MR. TAYLOR: Objection, vague.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. I'm sorry. Did – did you answer,</p> <p>13 sir?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Who is Grant Scott?</p> <p>16 A. I understand he was the trustee of</p> <p>17 the DAF for a number of years.</p> <p>18 Q. When you say "he was the trustee of</p> <p>19 the DAF," what are you referring to?</p> <p>20 A. I always refer to him as "trustee,"</p> <p>21 but I see it's labeled here as "managing</p> <p>22 member."</p> <p>23 Q. Do you know how he came to be</p> <p>24 appointed the trustee of the DAF?</p> <p>25 A. I believe it was on my</p>	<p>Page 297</p> <p>1 Dondero - 6-1-2021</p> <p>2 recommendation.</p> <p>3 Q. Who did you make the recommendation</p> <p>4 to?</p> <p>5 A. It would have been Mark Patrick.</p> <p>6 Q. Did Mark Patrick have the authority</p> <p>7 to appoint Mr. Scott as the trustee of the DAF?</p> <p>8 MR. SBAITI: Objection, vague.</p> <p>9 Object to the extent it calls for a legal</p> <p>10 conclusion.</p> <p>11 A. Yeah, I don't know.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Well, you've known Mr. Scott since</p> <p>14 high school; isn't that right?</p> <p>15 A. Yes.</p> <p>16 Q. You went to UVA together; isn't that</p> <p>17 right?</p> <p>18 A. Yes.</p> <p>19 Q. You were housemates together in</p> <p>20 college; isn't that right?</p> <p>21 A. Yes.</p> <p>22 Q. He was the best man at your wedding;</p> <p>23 isn't that right?</p> <p>24 A. Yes.</p> <p>25 Q. You picked Mr. Scott to serve as the</p>
<p>Page 298</p> <p>1 Dondero - 6-1-2021</p> <p>2 trustee of the DAF; isn't that right?</p> <p>3 MR. TAYLOR: Objection. That's not</p> <p>4 what he stated.</p> <p>5 A. I – on the original formation, I</p> <p>6 recommended Grant Scott.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. And you recommended Mr. Scott to</p> <p>9 Mr. Patrick?</p> <p>10 A. That's my recollection, I believe,</p> <p>11 but I don't remember specifically.</p> <p>12 Q. Do you remember if Mr. Patrick held</p> <p>13 any role in any entity on the chart that stands</p> <p>14 before you?</p> <p>15 Withdrawn.</p> <p>16 Do you know if Mr. Patrick held any</p> <p>17 role with any entity prior to January 1st,</p> <p>18 2021?</p> <p>19 MR. SBAITI: Objection, vague.</p> <p>20 A. I don't know.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Why did you make the recommendation</p> <p>23 to Mr. Patrick?</p> <p>24 A. Initially? You're saying the</p> <p>25 initial recommendation when it was set up?</p>	<p>Page 299</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Correct.</p> <p>3 A. 13, 14, 15 years ago.</p> <p>4 The – it – we thought – I thought</p> <p>5 at the time he would be suitable.</p> <p>6 Q. But why did you select Mr. Patrick</p> <p>7 as the person to whom to make your</p> <p>8 recommendation?</p> <p>9 A. Because he was responsible for</p> <p>10 setting up the overall structure.</p> <p>11 Q. Did he – were you seeking his</p> <p>12 approval when you made the recommendation to</p> <p>13 him?</p> <p>14 A. I – I don't know the roles he was</p> <p>15 playing at the – at that moment, so I – I</p> <p>16 don't know.</p> <p>17 Q. At the time that you recommended</p> <p>18 Mr. Scott to serve as the trustee of the DAF,</p> <p>19 did you have any understanding as to who had</p> <p>20 the authority to actually appoint Mr. Scott?</p> <p>21 A. I did not specifically.</p> <p>22 Q. Did you ever learn who had the power</p> <p>23 to appoint the trustee of the DAF?</p> <p>24 A. I did not.</p> <p>25 Q. As you sit here today, do you have</p>

<p>Page 300</p> <p>1 Dondero - 6-1-2021</p> <p>2 any understanding as to who has the power to</p> <p>3 appoint the trustee of the DAF?</p> <p>4 MR. TAYLOR: I'll instruct the</p> <p>5 witness not to answer to the extent it</p> <p>6 would require him to reveal privileged</p> <p>7 communications with counsel.</p> <p>8 MR. MORRIS: I'm not asking him for</p> <p>9 any communications, to be clear.</p> <p>10 MR. TAYLOR: Or anything he heard</p> <p>11 from counsel.</p> <p>12 (Audio distortion.)</p> <p>13 MR. MORRIS: Please don't – Clay,</p> <p>14 you're a very good lawyer, please don't</p> <p>15 coach the witness. He's a very</p> <p>16 sophisticated witness.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you have any understanding, as</p> <p>19 you sit here today, sir, as to who has the</p> <p>20 authority to appoint the trustee of the DAF?</p> <p>21 A. I know it's complicated. I know it</p> <p>22 has to do with shares. I know it's – I know</p> <p>23 it's multiple levels, but I don't have specific</p> <p>24 knowledge.</p> <p>25 Q. Do you know if Mr. Patrick ever</p>	<p>Page 301</p> <p>1 Dondero - 6-1-2021</p> <p>2 considered appointing – withdrawn.</p> <p>3 MR. MORRIS: Could we please put up</p> <p>4 the next exhibit, Patrick File 6,</p> <p>5 Document 1?</p> <p>6 (Exhibit 2 introduced.)</p> <p>7 MR. SBAITI: John, is that document</p> <p>8 you put up a labeled exhibit for the, like</p> <p>9 Exhibit 1 or something, the one you have up</p> <p>10 right here.</p> <p>11 MR. MORRIS: Yeah, that will be</p> <p>12 marked as Exhibit 1, thank you.</p> <p>13 So, now we're going to put up</p> <p>14 Exhibit 2.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you see that that's the Amended</p> <p>17 and Restated Limited Liability Company</p> <p>18 Agreement of the Charitable DAF GP, LLC?</p> <p>19 A. Yes.</p> <p>20 Q. And do you see that it's dated</p> <p>21 effective as of January 1st, 2012?</p> <p>22 A. Yes.</p> <p>23 Q. So, that's approximately nine plus</p> <p>24 years ago.</p> <p>25 Do I have that right?</p>
<p>Page 302</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 MR. MORRIS: Can we go to the last</p> <p>5 page, please?</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Is that your signature on that page,</p> <p>8 sir?</p> <p>9 A. Yes.</p> <p>10 Q. And do you understand that, pursuant</p> <p>11 to this agreement, Mr. Scott replaced you as</p> <p>12 the managing member of the DAF GP, LLC?</p> <p>13 A. I – I don't have a recollection of</p> <p>14 that.</p> <p>15 Q. Do you remember that you served as</p> <p>16 the managing member of the DAF GP, LLC?</p> <p>17 A. I don't – I don't recall that.</p> <p>18 Q. Now, Mr. Scott is a lawyer, correct?</p> <p>19 A. Yes.</p> <p>20 Q. He's a patent lawyer. Do I have</p> <p>21 that right?</p> <p>22 A. Yes.</p> <p>23 Q. He has no experience or expertise in</p> <p>24 finance, does he, to the best of your</p> <p>25 knowledge?</p>	<p>Page 303</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. I would not say he has expertise. I</p> <p>3 wouldn't say he's an expert in it, but I – I'd</p> <p>4 say he's more sophisticated than the average</p> <p>5 layperson.</p> <p>6 Q. Well, at the time that you</p> <p>7 recommended him to Mr. Patrick, did you do so</p> <p>8 because you thought he had valuable experience</p> <p>9 and expertise in finance or investment?</p> <p>10 MR. SBAITI: Objection, assumes</p> <p>11 facts not in evidence before the witness.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. That wasn't one of the reasons you</p> <p>14 recommended Mr. Scott, is it?</p> <p>15 A. He wasn't going to be the investment</p> <p>16 advisor. DAF had a separate investment</p> <p>17 advisor.</p> <p>18 Q. And who was going to be the</p> <p>19 investment advisor?</p> <p>20 A. Highland.</p> <p>21 Q. And you owned and controlled</p> <p>22 Highland at the time, correct?</p> <p>23 MR. TAYLOR: Objection.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Withdrawn.</p>

<p style="text-align: right;">Page 304</p> <p>1 Dondero - 6-1-2021</p> <p>2 You controlled Highland at the time,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. Did Mr. Scott have any experience or</p> <p>6 expertise running charitable organizations, to</p> <p>7 the best of your knowledge?</p> <p>8 A. No.</p> <p>9 Q. Had he ever, to the best of your</p> <p>10 knowledge, made any decisions concerning</p> <p>11 collateralized loan obligations?</p> <p>12 A. No.</p> <p>13 Q. Can you tell me why you recommended</p> <p>14 to Mr. Patrick that Mr. Scott serve as the</p> <p>15 trustee of DAF?</p> <p>16 MR. TAYLOR: Objection, asked and</p> <p>17 answered.</p> <p>18 A. I – I thought he would be a good</p> <p>19 fit for the position.</p> <p>20 BY MR. MORRIS:</p> <p>21 Q. Why?</p> <p>22 A. It required – I don't – in my</p> <p>23 mind – or I believed it would require a lawyer</p> <p>24 and someone with legal skills, and I thought he</p> <p>25 would be good at the position.</p>	<p style="text-align: right;">Page 305</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. And you trusted him; is that right?</p> <p>3 A. I – yes.</p> <p>4 Q. And you had a life-long relationship</p> <p>5 with him; isn't that right? Isn't that one of</p> <p>6 the reasons why you recommended him for this</p> <p>7 position?</p> <p>8 A. Yes.</p> <p>9 Q. Do you know whether Mr. Patrick –</p> <p>10 withdrawn.</p> <p>11 Is Mr. – do you believe that</p> <p>12 Mr. Patrick is the person who appointed</p> <p>13 Mr. Scott as your successor as managing member</p> <p>14 in 2012?</p> <p>15 MR. SBAITI: Objection, asked and</p> <p>16 answered, calls for speculation; and object</p> <p>17 to the extent it calls for a legal</p> <p>18 conclusion.</p> <p>19 A. I could – I could repeat the answer</p> <p>20 again.</p> <p>21 I don't know the formal process, but</p> <p>22 I do remember recommending to Mark Patrick that</p> <p>23 Grant would be a good candidate. Now, how –</p> <p>24 what mechanism and how the process works and</p> <p>25 who actually approved that, I – I don't know.</p>
<p style="text-align: right;">Page 306</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Did you recommend anybody else, or</p> <p>4 was Mr. Scott the only person that you</p> <p>5 recommended?</p> <p>6 A. I don't – I don't remember. I</p> <p>7 don't remember. I don't remember recommending</p> <p>8 anybody else or if the process required it. I</p> <p>9 don't remember the process.</p> <p>10 Q. Was anybody involved in the process</p> <p>11 other than you and Mr. Patrick?</p> <p>12 MR. TAYLOR: Objection to the extent</p> <p>13 it calls for speculation.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Withdrawn.</p> <p>16 Do you know – do you know if</p> <p>17 anybody was in the process – involved in the</p> <p>18 process other than you and Mr. Patrick?</p> <p>19 A. Again, I don't know the process and</p> <p>20 the mechanism, if there were offshore boards</p> <p>21 involved or if the four underlying charities</p> <p>22 were involved. It was – it was complicated,</p> <p>23 and I delegated the process to Mark Patrick.</p> <p>24 Q. Okay. I'm not asking you to</p> <p>25 speculate. I'm just asking for your knowledge.</p>	<p style="text-align: right;">Page 307</p> <p>1 Dondero - 6-1-2021</p> <p>2 Can you identify any person or</p> <p>3 entity who was involved in the appointment of</p> <p>4 Mr. Scott as your successor as managing member</p> <p>5 of the DAF GP, LLC, other than yourself and</p> <p>6 Mr. Patrick?</p> <p>7 MR. SBAITI: Objection, assumes</p> <p>8 facts.</p> <p>9 A. Yeah, I don't – I don't have</p> <p>10 specific knowledge.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Okay. Do you understand that in</p> <p>13 addition to becoming the managing member of the</p> <p>14 Charitable DAF GP, LLC, that Mr. Scott also</p> <p>15 became the sole director of the Charitable DAF</p> <p>16 HoldCo, Ltd., Charitable DAF Fund, L.P., and</p> <p>17 CLO HoldCo, Ltd.?</p> <p>18 MR. TAYLOR: Objection, assumes</p> <p>19 facts not before the witness.</p> <p>20 A. No.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you know if he ever held the</p> <p>23 directorship of any of those entities?</p> <p>24 MR. SBAITI: Objection, vague.</p> <p>25 A. I – I don't know what his exact</p>



<p style="text-align: right;">Page 308</p> <p>1 Dondero - 6-1-2021</p> <p>2 role is now, but I – I thought I was informed</p> <p>3 that that's – his role now has something to do</p> <p>4 with directorship.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Can we put the chart back up,</p> <p>7 Exhibit 1, please?</p> <p>8 (Exhibit 1 on screen.)</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Do you know whether Mr. Scott held</p> <p>11 any position at all with Charitable DAF HoldCo,</p> <p>12 Ltd., at any time?</p> <p>13 A. I don't know.</p> <p>14 Q. Can you identify any person who's</p> <p>15 ever – who you believe had the authority to</p> <p>16 act on behalf of the Charitable DAF HoldCo,</p> <p>17 Ltd., prior to March 1st, 2021?</p> <p>18 MR. SBAITI: Objection, assumes</p> <p>19 facts not in evidence.</p> <p>20 A. I don't know.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. You can't name anybody in the world</p> <p>23 who was authorized on behalf of – who was</p> <p>24 authorized to act on behalf of the Charitable</p> <p>25 DAF HoldCo, Ltd., prior to March 1st, 2021?</p>	<p style="text-align: right;">Page 309</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. TAYLOR: Objection, asked and</p> <p>3 answered.</p> <p>4 MR. SBAITI: Objection, calls for a</p> <p>5 legal opinion.</p> <p>6 A. I don't know.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. How about the Charitable DAF Fund,</p> <p>9 L.P.; can you identify anybody in the world who</p> <p>10 was authorized to act on behalf of that entity</p> <p>11 prior to March 1st, 2021?</p> <p>12 MR. SBAITI: Objection, calls for a</p> <p>13 legal opinion.</p> <p>14 A. I mean, other than Grant Scott, the</p> <p>15 org chart seems to roll up back up to him.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. So, you're willing to say</p> <p>18 that Grant Scott acted on behalf of that</p> <p>19 entity?</p> <p>20 Do I have that right?</p> <p>21 MR. TAYLOR: That's not –</p> <p>22 mischaracterizes his statements. He's</p> <p>23 giving you his general –</p> <p>24 MR. MORRIS: Just object to the form</p> <p>25 of the question. Please, no speaking</p>
<p style="text-align: right;">Page 310</p> <p>1 Dondero - 6-1-2021</p> <p>2 objections. It's very simple.</p> <p>3 MR. TAYLOR: So, John, I'm going to</p> <p>4 make my record. If you don't like it, then</p> <p>5 bring it up with the Judge.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Mr. Dondero, do you understand that</p> <p>8 Mr. Scott was authorized to act on behalf of</p> <p>9 the Charitable DAF Fund, L.P., prior to</p> <p>10 March 1st, 2021?</p> <p>11 MR. TAYLOR: Objection, calls for a</p> <p>12 legal conclusion.</p> <p>13 A. I – I don't know.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Okay. Do you know if anybody was</p> <p>16 authorized to act on behalf of CLO HoldCo,</p> <p>17 Ltd., prior to March 1st, 2021?</p> <p>18 MR. TAYLOR: Objection, calls for a</p> <p>19 legal conclusion.</p> <p>20 A. I – I don't know the specifics on</p> <p>21 how this operated.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. But you can't identify any person,</p> <p>24 do I have that right, you don't know the</p> <p>25 identity of any person who was ever authorized</p>	<p style="text-align: right;">Page 311</p> <p>1 Dondero - 6-1-2021</p> <p>2 to act on behalf of CLO HoldCo, Ltd., prior to</p> <p>3 March 1st, 2021; is that right?</p> <p>4 MR. TAYLOR: Objection, calls for a</p> <p>5 legal conclusion.</p> <p>6 MR. MORRIS: I'm not asking for a</p> <p>7 legal conclusion. I'm asking for</p> <p>8 Mr. Dondero's knowledge of the facts or his</p> <p>9 understanding of the facts.</p> <p>10 MR. TAYLOR: With all due respect,</p> <p>11 it calls for a legal conclusion.</p> <p>12 MR. MORRIS: I cannot wait – I</p> <p>13 cannot wait until next Tuesday. This is</p> <p>14 going to be brilliant.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Mr. Dondero, let me try one last</p> <p>17 time.</p> <p>18 Can you identify any person who you</p> <p>19 believed was authorized to act on behalf of CLO</p> <p>20 HoldCo, Ltd., prior to March 1st, 2021?</p> <p>21 A. I need to answer the question this</p> <p>22 way: My knowledge begins and ends with Grant</p> <p>23 as the trustee, or on this org chart, managing</p> <p>24 member; and his control, it looks like it flows</p> <p>25 down through all those entities. Now – or –</p>

<p>Page 312</p> <p>1 Dondero - 6-1-2021</p> <p>2 or ownership, at least, or maybe control or</p> <p>3 agreement.</p> <p>4 Now, what other people or boards or</p> <p>5 trustees or – or entity he had to go through,</p> <p>6 whether US Cayman Guernsey, et cetera, to get</p> <p>7 things done and where the assets were held, I</p> <p>8 do not have specific knowledge and I don't know</p> <p>9 the names of the people or the entities that</p> <p>10 were on those boards or – supervisory or</p> <p>11 holders of shares, or whatever. I wasn't</p> <p>12 specifically involved in the operation of this</p> <p>13 structure.</p> <p>14 Q. Did the Charitable DAF Fund, L.P.,</p> <p>15 and Highland Capital Management, L.P., enter</p> <p>16 into an Amended and Restated Investment</p> <p>17 Advisory Agreement, to the best of your</p> <p>18 knowledge?</p> <p>19 A. There was an Investment Advisory</p> <p>20 Agreement, as far as I knew.</p> <p>21 Q. And what is your understanding of</p> <p>22 the purpose of the Investment Advisory</p> <p>23 Agreement?</p> <p>24 A. Excuse me.</p> <p>25 To provide portfolio management to</p>	<p>Page 313</p> <p>1 Dondero - 6-1-2021</p> <p>2 achieve adequate returns on the portfolio to</p> <p>3 support the charitable giving of the DAF.</p> <p>4 Q. Did Mr. Scott lack the capability to</p> <p>5 provide portfolio management services to the</p> <p>6 Charitable DAF Fund, L.P., to the best of your</p> <p>7 knowledge?</p> <p>8 A. I would not say that.</p> <p>9 Q. So why – why did – withdrawn.</p> <p>10 Was the – did you participate in</p> <p>11 the negotiation – withdrawn.</p> <p>12 Can we please put up the next</p> <p>13 exhibit? We'll call it Exhibit 3.</p> <p>14 (Exhibit 3 introduced.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Do you see this is an Amended and</p> <p>17 Restated Investment Advisory Agreement between</p> <p>18 the Charitable DAF Fund, L.P.; the Charitable</p> <p>19 DAF, GP, LLC; and Highland Capital Management,</p> <p>20 L.P.?</p> <p>21 A. Yes.</p> <p>22 Q. Is this the agreement you were just</p> <p>23 referring to?</p> <p>24 A. Unless there was another amended</p> <p>25 one. I believe there was always one – best</p>
<p>Page 314</p> <p>1 Dondero - 6-1-2021</p> <p>2 practice is to have an investment advisory</p> <p>3 group.</p> <p>4 Q. And do you know who prepared this</p> <p>5 document?</p> <p>6 A. No.</p> <p>7 Q. Do you know if it was the subject of</p> <p>8 any negotiation?</p> <p>9 A. I don't know.</p> <p>10 Q. Do you know if the Charitable DAF</p> <p>11 Fund, L.P., or the Charitable DAF GP, LLC, had</p> <p>12 independent counsel in connection with the</p> <p>13 negotiation and execution of this Amended and</p> <p>14 Restated Investment Advisory Agreement?</p> <p>15 A. I don't know.</p> <p>16 Q. Do you know if the Charitable DAF</p> <p>17 Fund, L.P., or the Charitable DAF GP, LLC, ever</p> <p>18 hired independent counsel prior to the</p> <p>19 commencement of Highland's bankruptcy in</p> <p>20 October 2019?</p> <p>21 A. I don't know.</p> <p>22 Q. Did those entities also enter into a</p> <p>23 Shared Services Agreement with Highland Capital</p> <p>24 Management?</p> <p>25 A. I believe there was a Shared</p>	<p>Page 315</p> <p>1 Dondero - 6-1-2021</p> <p>2 Services Agreement. I don't know which DAF</p> <p>3 entities entered it.</p> <p>4 Q. Before we get to that, pursuant to</p> <p>5 the Investment and Advisory Agreement, did</p> <p>6 Highland Capital Management, L.P., manage the</p> <p>7 assets of the DAF and CLO HoldCo?</p> <p>8 MR. TAYLOR: Objection, vague.</p> <p>9 A. Can you repeat the question again?</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Sure. Is it your understanding that</p> <p>12 pursuant to this agreement, HCMLP managed the</p> <p>13 assets of the DAF and CLO HoldCo?</p> <p>14 A. This agreement discusses the DAF,</p> <p>15 right?</p> <p>16 This disagreement doesn't discuss</p> <p>17 CLO HoldCo, right?</p> <p>18 Q. Do you know whether HCMLP ever had</p> <p>19 any agreement of any kind with CLO HoldCo</p> <p>20 pursuant to which it managed CLO HoldCo's</p> <p>21 assets?</p> <p>22 A. I don't know for certain.</p> <p>23 Q. Do you have any understanding at all</p> <p>24 as to whether such an agreement existed?</p> <p>25 A. I – I don't know for certain. I'm</p>

<p>Page 316</p> <p>1 Dondero - 6-1-2021</p> <p>2 willing to be refreshed.</p> <p>3 Q. Do you know who provides –</p> <p>4 withdrawn.</p> <p>5 Do you know whether anybody provides</p> <p>6 independent – withdrawn.</p> <p>7 Do you know whether anybody has an</p> <p>8 agreement with the Charitable DAF Fund, L.P.,</p> <p>9 or the Charitable DAF GP, LLC, today similar to</p> <p>10 the type that had been previously entered into</p> <p>11 with HCMLP?</p> <p>12 MR. TAYLOR: Objection, vague.</p> <p>13 A. I believe Skygate has a similar –</p> <p>14 similar agreements in place.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Is it your understanding that</p> <p>17 Skygate effectively replaced HCMLP as the</p> <p>18 investment advisor to the DAF?</p> <p>19 A. Let me clarify that for a second.</p> <p>20 I believe Skygate has the Shared</p> <p>21 Services Agreement. I don't know whether it's</p> <p>22 Skygate or NexPoint has the Investment Advisory</p> <p>23 Agreement or if it was another entity. I</p> <p>24 don't – I don't know. I – I don't know the</p> <p>25 specifics.</p>	<p>Page 317</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Okay. While Mr. Scott served – I</p> <p>3 think you said as the trustee of the DAF, can</p> <p>4 you identify any investment decision that HCMLP</p> <p>5 had recommended that Mr. Scott rejected?</p> <p>6 A. No.</p> <p>7 Q. Can you think of any investment that</p> <p>8 Mr. Scott made on behalf of the DAF that didn't</p> <p>9 originate with HCMLP?</p> <p>10 A. He wasn't the investment advisor,</p> <p>11 but, no, I don't – I don't recall.</p> <p>12 Q. Let's just speed this up a bit.</p> <p>13 Do you recall that in October 2019,</p> <p>14 the debtor filed for bankruptcy?</p> <p>15 A. Yes.</p> <p>16 Q. And do you recall that after the</p> <p>17 debtor filed for bankruptcy, CLO HoldCo, Ltd.,</p> <p>18 retained John Kane to act as counsel on its</p> <p>19 behalf?</p> <p>20 A. I – I know he was retained. I</p> <p>21 don't know which entities in particular.</p> <p>22 Q. Do you have any understanding as to</p> <p>23 who Mr. Kane represented?</p> <p>24 A. My understanding was that he</p> <p>25 represented the DAF. Now, whether it included</p>
<p>Page 318</p> <p>1 Dondero - 6-1-2021</p> <p>2 all entities, CLO HoldCo, the offshore</p> <p>3 entities, which entities, I – I don't know.</p> <p>4 Q. Do you know if – do you know how</p> <p>5 Mr. Kane came to be retained by the DAF?</p> <p>6 MR. SBAITI: Objection to the extent</p> <p>7 it calls for the DAF's confidential</p> <p>8 privileged information (inaudible.)</p> <p>9 A. I – I don't remember. I know the</p> <p>10 lawyers – I let the legal department or</p> <p>11 lawyers find and identify good – I let them go</p> <p>12 through the process of identifying and vetting</p> <p>13 law firms.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. And are the lawyers that you're</p> <p>16 referring to in-house counsel at HCMLP?</p> <p>17 A. I – I don't know which lawyers were</p> <p>18 involved.</p> <p>19 Q. Well, you just said that you let the</p> <p>20 lawyers do the vetting. Which lawyers were you</p> <p>21 referring to?</p> <p>22 A. It could have been the HCMLP</p> <p>23 lawyers, it could have been NexPoint lawyers.</p> <p>24 I don't know.</p> <p>25 Q. Could it have been any other lawyers</p>	<p>Page 319</p> <p>1 Dondero - 6-1-2021</p> <p>2 besides the HCMLP lawyers and the NexPoint</p> <p>3 lawyers?</p> <p>4 A. I mean – yes. I mean, sometimes we</p> <p>5 get recommendations from outside counsel</p> <p>6 regarding other outside counsel. The</p> <p>7 recommendation could have come from one of the</p> <p>8 other bankruptcy attorneys involved in the</p> <p>9 case. I don't know.</p> <p>10 Q. Do you recall that in October 2020,</p> <p>11 Mr. Scott caused CLO HoldCo to amend its proof</p> <p>12 of claim?</p> <p>13 MR. TAYLOR: Objection, assumes</p> <p>14 facts not before the witness.</p> <p>15 A. Yeah, I don't – I don't know.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Let me take it out of the –</p> <p>18 (Simultaneous conversation.)</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Okay. Let me take it out of the</p> <p>21 time frame.</p> <p>22 Do you recall that there came a</p> <p>23 moment in time when Mr. Scott caused CLO HoldCo</p> <p>24 to amend its proof of claim by reducing the</p> <p>25 value of the claim to zero dollars?</p>

<p>Page 320</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. I – I know there was ultimately a</p> <p>3 settlement agreement. I don't know how that</p> <p>4 manifested itself.</p> <p>5 Q. Okay. So, just to be clear, you</p> <p>6 don't have any memory of CLO HoldCo –</p> <p>7 withdrawn.</p> <p>8 Do you have a memory of CLO HoldCo</p> <p>9 filing its original proof of claim in the</p> <p>10 amount of approximately \$11 million?</p> <p>11 A. I – I don't recall the amount. I</p> <p>12 do remember that the DAF was overbilled by</p> <p>13 Highland and there was a claim. Whether it was</p> <p>14 a POC or an administrative claim or – I don't</p> <p>15 know how that manifested itself in the</p> <p>16 bankruptcy. It's – yeah.</p> <p>17 Q. Okay. And regardless of the form of</p> <p>18 the claim, do you remember that there came a</p> <p>19 point in time when Mr. Scott amended the claim</p> <p>20 to reduce the value to zero?</p> <p>21 A. I – I heard a hundred thousand</p> <p>22 dollars, but it's essentially zero, I guess.</p> <p>23 Q. And did you know that Mr. Scott was</p> <p>24 going to amend the proof of claim in that</p> <p>25 manner prior to the time that he actually did</p>	<p>Page 321</p> <p>1 Dondero - 6-1-2021</p> <p>2 so?</p> <p>3 MR. TAYLOR: Objection to the extent</p> <p>4 it calls for him to invade the</p> <p>5 attorney-client privilege.</p> <p>6 A. I don't – I don't have knowledge of</p> <p>7 what you just said. I – my recollection is</p> <p>8 there was a legitimate overbilling that</p> <p>9 Highland did to multiple parties who have</p> <p>10 pursued multiple – those multiple claims</p> <p>11 against the estate, but I don't have – I don't</p> <p>12 have specific knowledge of why the 11 was</p> <p>13 reduced to zero, but –</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Did you ever discuss with Mr. Scott</p> <p>16 his decision to reduce the claim to zero?</p> <p>17 A. Not – not before he did it.</p> <p>18 Q. At any time, did you ever discuss</p> <p>19 with Mr. Scott his decision to reduce the claim</p> <p>20 to zero?</p> <p>21 A. I believe afterwards.</p> <p>22 Q. And what do you recall about your</p> <p>23 discussions with Mr. Scott afterwards?</p> <p>24 A. That he had given up bona fide</p> <p>25 claims against the debtor, and I didn't</p>
<p>Page 322</p> <p>1 Dondero - 6-1-2021</p> <p>2 understand why.</p> <p>3 Q. Did he explain to you why he thought</p> <p>4 he was not giving up bona fide claims –</p> <p>5 withdrawn.</p> <p>6 What did he say in response?</p> <p>7 MR. SBAITI: Objection, calls</p> <p>8 for legal –</p> <p>9 (Audio distortion.)</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. If anything?</p> <p>12 A. I don't remember him having an</p> <p>13 explanation.</p> <p>14 Q. Was anybody else – did anybody else</p> <p>15 participate in this discussion?</p> <p>16 A. No.</p> <p>17 Q. Did this discussion occur in a</p> <p>18 singular phone call, or was it in multiple –</p> <p>19 during multiple conversations?</p> <p>20 A. A couple, one or two.</p> <p>21 Q. Do you remember anything about your</p> <p>22 discussions with Mr. Scott concerning his</p> <p>23 decision to amend CLO HoldCo's proof of claim</p> <p>24 by reducing it to zero, other than what you've</p> <p>25 testified to so far?</p>	<p>Page 323</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. TAYLOR: Objection, vague.</p> <p>3 A. No, but I'm willing – I'm willing</p> <p>4 to be refreshed or answer more questions, but</p> <p>5 those are the only things that come to mind.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Okay. So, I think what you've told</p> <p>8 me – and I just want to make sure that I have</p> <p>9 this right – that after the amendment was filed,</p> <p>10 you had several conversations with Mr. Scott in</p> <p>11 which you told him that you believed he had</p> <p>12 given up bona fide claims against the debtor,</p> <p>13 but that you don't recall what, if anything, he</p> <p>14 said in response.</p> <p>15 Have I missed anything?</p> <p>16 A. You used "several." It's – I said</p> <p>17 "a couple."</p> <p>18 Q. Okay.</p> <p>19 A. But otherwise, that's – that's my</p> <p>20 testimony.</p> <p>21 Q. Do you recall that sometime after</p> <p>22 that, CLO HoldCo had filed an objection to the</p> <p>23 proposed HarbourVest Settlement?</p> <p>24 A. Yes.</p> <p>25 Q. And did you subsequently learn that</p>

<p>Page 324</p> <p>1 Dondero - 6-1-2021</p> <p>2 CLO HoldCo withdrew its objection to the</p> <p>3 HarbourVest Settlement?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall if you learned that</p> <p>6 before or after CLO HoldCo withdrew its</p> <p>7 objection – withdrawn.</p> <p>8 That wasn't a good question.</p> <p>9 Did you know, prior to the time that</p> <p>10 CLO HoldCo announced that it was withdrawing</p> <p>11 its objection, that it intended to do so; or</p> <p>12 did you learn about that after – you know, as</p> <p>13 the announcement was being made?</p> <p>14 MR. SBAIT: Objection, compound.</p> <p>15 MR. TAYLOR: Objection, compound.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. You can answer.</p> <p>18 A. I learned about it at the hearing.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Were you surprised?</p> <p>21 A. Yes.</p> <p>22 Q. And why were you surprised?</p> <p>23 A. It was inappropriate.</p> <p>24 Q. Why did you believe it was</p> <p>25 inappropriate?</p>	<p>Page 325</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. The night before, Counsel had</p> <p>3 confirmed with other counsel.</p> <p>4 MR. TAYLOR: Instruct the witness</p> <p>5 not to reveal any privileged information.</p> <p>6 THE WITNESS: Okay.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. Mr. Dondero, you and I have done</p> <p>9 this many, many times. I hope that you</p> <p>10 understand that I'm never, ever asking or</p> <p>11 hoping that you'll mistakenly divulge</p> <p>12 attorney-client communications.</p> <p>13 A. Yeah. Let me rephrase.</p> <p>14 Q. Yeah. So, having said that, you</p> <p>15 said that you believed it was inappropriate;</p> <p>16 and the question is really simple: Why did you</p> <p>17 believe it was inappropriate?</p> <p>18 A. There was legal basis or legal</p> <p>19 interpretation, I believed, in the governing</p> <p>20 partnership agreement justifying the objection;</p> <p>21 and I also believed there were duties under the</p> <p>22 Advisors Act to – for the DAF to continue with</p> <p>23 its – or to argue its objections.</p> <p>24 Q. And after you learned that Mr. Scott</p> <p>25 instructed his attorneys to withdraw CLO</p>
<p>Page 326</p> <p>1 Dondero - 6-1-2021</p> <p>2 HoldCo's objection to the HarbourVest</p> <p>3 Settlement, did you have a conversation with</p> <p>4 Mr. Scott about his decision?</p> <p>5 MR. TAYLOR: Objection, assumes</p> <p>6 facts not in evidence.</p> <p>7 A. Yeah, I don't agree with the first</p> <p>8 part of that question, so I need you to</p> <p>9 rephrase it, please.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. After you – after you learned that</p> <p>12 CLO HoldCo withdrew the objection, did you</p> <p>13 speak with Mr. Scott about that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Did you have one conversation</p> <p>16 or more than one conversation with Mr. Scott</p> <p>17 concerning CLO HoldCo's withdrawal of its</p> <p>18 objection to the HarbourVest Settlement?</p> <p>19 A. I – I only recall one.</p> <p>20 Q. Did anybody participate in that</p> <p>21 conversation besides the two of you?</p> <p>22 A. No.</p> <p>23 Q. Did that conversation take place on</p> <p>24 the telephone or in some other form?</p> <p>25 A. I – I don't know.</p>	<p>Page 327</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Do you know how long after the</p> <p>3 conclusion of the hearing the conversation took</p> <p>4 place? Was it the same day? Was it</p> <p>5 afterwards?</p> <p>6 A. I believe it was the same day or</p> <p>7 shortly thereafter.</p> <p>8 Q. And what do you recall – please</p> <p>9 tell me everything you recall about the</p> <p>10 conversation, everything that you said and</p> <p>11 everything that he said.</p> <p>12 A. The only two points I remember was</p> <p>13 that it was inappropriate for the DAF to change</p> <p>14 direction an hour before the hearing without</p> <p>15 informing anybody else when it was – yeah,</p> <p>16 when it was a reversal of the direction he had</p> <p>17 been going in for weeks and that it was also</p> <p>18 inappropriate to – well, no, that's – that</p> <p>19 was – that was really – that was really it, I</p> <p>20 guess.</p> <p>21 Q. Do you recall what, if anything,</p> <p>22 Mr. Scott said in response?</p> <p>23 MR. SBAIT: Objection calls –</p> <p>24 (inaudible.)</p> <p>25 MR. MORRIS: What's the basis for</p>



<p>Page 328</p> <p>1 Dondero - 6-1-2021</p> <p>2 the objection?</p> <p>3 MR. TAYLOR: Objection, calls for</p> <p>4 hearsay.</p> <p>5 MR. SBAITl: Calls for hearsay.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. You can answer.</p> <p>8 A. That he had done it based on advice</p> <p>9 of counsel.</p> <p>10 Q. Did you have any reason to doubt</p> <p>11 that?</p> <p>12 A. It – it didn't – it didn't make</p> <p>13 sense that counsel would change their opinion</p> <p>14 between the night before and the morning of the</p> <p>15 hearing, but I guess that – that is a reason</p> <p>16 to doubt it.</p> <p>17 Q. Do you think – do you think</p> <p>18 Mr. Scott acted in good faith when he made the</p> <p>19 decision to withdraw CLO HoldCo's objection to</p> <p>20 the HarbourVest Settlement?</p> <p>21 A. Can you ask that question – ask</p> <p>22 that question again, please?</p> <p>23 Q. Sure. Do you believe that Mr. Scott</p> <p>24 acted in good faith when he made the decision</p> <p>25 to withdraw the CLO HoldCo objection to the</p>	<p>Page 329</p> <p>1 Dondero - 6-1-2021</p> <p>2 HarbourVest Settlement?</p> <p>3 A. I don't believe he operated in the</p> <p>4 best interest of the DAF or CLO HoldCo by</p> <p>5 withdrawing the claims or withdrawing the</p> <p>6 objectives – objections.</p> <p>7 Q. Did you – did the subject of the</p> <p>8 Advisors Act come up during this conversation?</p> <p>9 A. I don't – I don't remember if it</p> <p>10 specifically came up.</p> <p>11 Q. Do you recall if the subject of</p> <p>12 "fiduciary duties" came up in this</p> <p>13 conversation?</p> <p>14 A. Not using those words, but reminding</p> <p>15 him he needed to do what was in the best</p> <p>16 interest of the DAF was definitely part of the</p> <p>17 conversation.</p> <p>18 Q. Earlier you said – and I – if I</p> <p>19 miss – if I don't get this right, please feel</p> <p>20 free to correct me; but I believe you said that</p> <p>21 it was inappropriate for the DAF to change</p> <p>22 direction without informing anybody else.</p> <p>23 Do I have that right?</p> <p>24 A. Yes.</p> <p>25 Q. And who do you believe Mr. Scott</p>
<p>Page 330</p> <p>1 Dondero - 6-1-2021</p> <p>2 needed to inform of his decision?</p> <p>3 A. There was some coordination and</p> <p>4 cooperation among lawyers representing</p> <p>5 different parties and I believe there was some</p> <p>6 obligation – some professional obligation as</p> <p>7 part of that to inform and keep people abreast</p> <p>8 of it.</p> <p>9 Q. And would the lawyers at Bonds</p> <p>10 Ellis, your personal counsel, be among those</p> <p>11 lawyers that you believed he had the</p> <p>12 professional obligation to inform?</p> <p>13 MR. SBAITl: Objection –</p> <p>14 A. I don't know.</p> <p>15 MR. SBAITl: – lacks foundation.</p> <p>16 A. I don't know who was in the</p> <p>17 coordination group.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Do you believe that he had an</p> <p>20 obligation to inform you in advance?</p> <p>21 MR. SBAITl: Objection, vague.</p> <p>22 A. I don't know if I would use the word</p> <p>23 "obligation," but, again, as the founder or the</p> <p>24 primary donor and continued donor to the DAF</p> <p>25 and as the investment advisor fighting for</p>	<p>Page 331</p> <p>1 Dondero - 6-1-2021</p> <p>2 above-average returns on a daily basis for the</p> <p>3 fund, significant decisions that affect the</p> <p>4 finances of the fund would be something I would</p> <p>5 expect typically a trustee to discuss with a</p> <p>6 primary donor.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. And which primary donor are you</p> <p>9 referring to?</p> <p>10 A. Highland, prior to bankruptcy, and</p> <p>11 myself or NexPoint post-bankruptcy.</p> <p>12 Q. Is Dugaboy – The Dugaboy Investment</p> <p>13 Trust a donor to the DAF?</p> <p>14 MR. SBAITl: Objection, relevance.</p> <p>15 A. I – I believe it's been a donor</p> <p>16 over the years. It wasn't the initial donor, I</p> <p>17 don't believe.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. How about the Get Good Trust? Is</p> <p>20 the Get Good Trust a donor to the DAF?</p> <p>21 MR. SBAITl: Objection, relevance.</p> <p>22 A. I don't know.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you know if either the Get Good</p> <p>25 Trust or the Dugaboy Trust has any beneficial</p>

<p>Page 332</p> <p>1 Dondero - 6-1-2021</p> <p>2 interest in any of the DAF entities?</p> <p>3 A. It does not – or they do not.</p> <p>4 Q. Do you know if either of the Get</p> <p>5 Good or Dugaboy trusts have an interest in the</p> <p>6 CLO HoldCo, Ltd., entity?</p> <p>7 A. They – they do not. They do not.</p> <p>8 Q. Do you recall that a short while</p> <p>9 later or – or maybe even within the same</p> <p>10 month, the debtor commenced a lawsuit against</p> <p>11 the entities that we've referred to previously</p> <p>12 as the Advisors, the Funds, and CLO HoldCo,</p> <p>13 Ltd.?</p> <p>14 A. Which litigation is that?</p> <p>15 Q. That was the one where the debtor is</p> <p>16 seeking injunctive relief; and there was a</p> <p>17 hearing in late January on the debtor's motion</p> <p>18 for preliminary injunction against the Funds,</p> <p>19 the Advisors, and CLO HoldCo?</p> <p>20 A. There's – there's – which</p> <p>21 specifically?</p> <p>22 Q. Do you remember that there came a</p> <p>23 point in time when – when Mr. Scott, on behalf</p> <p>24 of CLO HoldCo, reached a settlement with the</p> <p>25 debtor that resolved the debtor's claim against</p>	<p>Page 333</p> <p>1 Dondero - 6-1-2021</p> <p>2 CLO HoldCo, Ltd.?</p> <p>3 A. I'm aware there was a settlement</p> <p>4 that resolved most of his – the – most of the</p> <p>5 issues with the debtor.</p> <p>6 Q. Okay. And do you recall how you</p> <p>7 learned about that settlement?</p> <p>8 MR. TAYLOR: Objection to the extent</p> <p>9 it invades any attorney-client privilege.</p> <p>10 A. I learned about it after it was</p> <p>11 done.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Okay. And do you have an</p> <p>14 understanding of the basic terms of the</p> <p>15 settlement?</p> <p>16 A. I think that was the hundred</p> <p>17 thousand I spoke of earlier that the – as the</p> <p>18 11 or \$12 million of overbilling that every</p> <p>19 other entity has pursued, you know, for – the</p> <p>20 overbilling was traded for a hundred thousand</p> <p>21 dollars, and the – I think Grant agreed to not</p> <p>22 pursue some historic actions and not pursue</p> <p>23 replacement of HCMLP as manager, regardless of</p> <p>24 whether it was in the best interest of the DAF</p> <p>25 or not.</p>
<p>Page 334</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. And did you ever have a conversation</p> <p>3 with Mr. Scott about his decision to enter into</p> <p>4 that settlement on behalf of CLO HoldCo, Ltd.?</p> <p>5 A. Yes.</p> <p>6 Q. And did that – did the</p> <p>7 communications take place in one conversation,</p> <p>8 more than one conversation, or in some other</p> <p>9 form?</p> <p>10 A. It was a couple times.</p> <p>11 Q. Do you recall if anybody –</p> <p>12 (Simultaneous conversation.)</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. I'm sorry, were you finished?</p> <p>15 A. It might have been just once, but</p> <p>16 either one or two times.</p> <p>17 Q. Okay. And did anybody participate</p> <p>18 in that conversation other than the two of you?</p> <p>19 A. No.</p> <p>20 Q. Can you recall everything that was</p> <p>21 discussed during that conversation, everything</p> <p>22 that you recall saying in sum or substance and</p> <p>23 everything that you can recall Mr. Scott</p> <p>24 saying?</p> <p>25 A. My message was what I just</p>	<p>Page 335</p> <p>1 Dondero - 6-1-2021</p> <p>2 articulated, that – that the compromise or the</p> <p>3 settlement wasn't in the best interest of the</p> <p>4 DAF, it wasn't in the best interest of the</p> <p>5 investments in the DAF.</p> <p>6 Q. Do you recall how long the</p> <p>7 conversation lasted?</p> <p>8 A. No. It wasn't that long.</p> <p>9 Q. Do you recall that shortly after</p> <p>10 Mr. Scott reached the settlement on behalf of</p> <p>11 CLO HoldCo, that he gave notice of his intent</p> <p>12 to resign from his positions with the DAF</p> <p>13 entities and CLO HoldCo, Ltd.?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall that there was a</p> <p>16 telephone conversation between and among you</p> <p>17 and Mr. Scott and certain lawyers at around the</p> <p>18 same time?</p> <p>19 A. I don't – I don't remember that</p> <p>20 specifically with the lawyers.</p> <p>21 MR. MORRIS: Can we please put up</p> <p>22 the next exhibit, which I think we're</p> <p>23 marking as Exhibit 4, which is Scott Bates</p> <p>24 No. 11?</p> <p>25 (Exhibit 4 introduced.)</p>

<p>Page 336</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. So, I'll represent to you,</p> <p>4 Mr. Dondero, that the hearing at which the CLO</p> <p>5 HoldCo, Ltd., settlement was presented took</p> <p>6 place on January 26th. And so, this is the</p> <p>7 following Sunday.</p> <p>8 And do you see there's a list of</p> <p>9 people who were going to participate in a</p> <p>10 conference call on Sunday, January 31st?</p> <p>11 A. Yes.</p> <p>12 Q. And you and Mr. Scott are among</p> <p>13 those people?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall if this phone call</p> <p>16 took place?</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall the purpose of the</p> <p>19 phone call?</p> <p>20 A. Yes. It didn't have anything to do</p> <p>21 with his resignation, this phone call.</p> <p>22 Q. So, what was the purpose of this</p> <p>23 call?</p> <p>24 A. Earlier, I stated that to make – to</p> <p>25 pivot the plans or what he was – or to</p>	<p>Page 337</p> <p>1 Dondero - 6-1-2021</p> <p>2 withdraw without telling anybody, to reach</p> <p>3 settlements without telling anybody that had a</p> <p>4 material negative impact on the DAF was</p> <p>5 inappropriate. And I believe the purpose of</p> <p>6 this call was his representation that John Kane</p> <p>7 had, in fact, told everybody, so – but when I</p> <p>8 spoke with everybody else, everybody said he</p> <p>9 hadn't talked to them, and so to figure out –</p> <p>10 to try and figure out what the truth was, we</p> <p>11 had a conference call with everybody.</p> <p>12 Q. Did you figure out what the truth</p> <p>13 was during that conference call?</p> <p>14 MR. TAYLOR: Objection. I'm going</p> <p>15 to have to instruct the client not to</p> <p>16 answer. This was a conversation with</p> <p>17 attorneys that were acting in concert under</p> <p>18 joint-defense agreement, or at least had a</p> <p>19 common interest in litigation at that point</p> <p>20 in time.</p> <p>21 MR. MORRIS: I think it's a little</p> <p>22 late for that.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. And there's no lawyer for you on</p> <p>25 this call, at least that's identified on this</p>
<p>Page 338</p> <p>1 Dondero - 6-1-2021</p> <p>2 email string, correct?</p> <p>3 MR. TAYLOR: That's incorrect.</p> <p>4 You'll see – note that Judge Lynn's – why</p> <p>5 it was his email, I don't know, but Judge</p> <p>6 Lynn's email address is on there.</p> <p>7 MR. MORRIS: Okay. I think having</p> <p>8 told me the purpose of the call, I think he</p> <p>9 ought to be able to disclose what the</p> <p>10 result of the call was. So I'm going to</p> <p>11 ask my question again.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. And that is, did you learn the truth</p> <p>14 as to whether or not Mr. Kane had given advance</p> <p>15 notice to any of the lawyers on this email</p> <p>16 string about any of the decisions you're</p> <p>17 referring to?</p> <p>18 MR. TAYLOR: I'm going to renew my</p> <p>19 objection. You can answer the question,</p> <p>20 but I do want to state for the record we</p> <p>21 believe it's inappropriate and if brought</p> <p>22 up in later proceedings, we'll move to</p> <p>23 strike.</p> <p>24 A. None of the lawyers on this email or</p> <p>25 that participated in the call acknowledged any</p>	<p>Page 339</p> <p>1 Dondero - 6-1-2021</p> <p>2 advanced conversations with Kane.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. Do you remember anything else about</p> <p>5 the phone call that's referred to on this</p> <p>6 exhibit?</p> <p>7 MR. TAYLOR: I'm just going to renew</p> <p>8 my objection.</p> <p>9 A. No.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. And do you recall that Mr. Scott</p> <p>12 gave notice of his intent to resign on the same</p> <p>13 day?</p> <p>14 A. I – I didn't know it was exactly</p> <p>15 the same day, but I knew it was on or around</p> <p>16 that time.</p> <p>17 Q. Okay.</p> <p>18 MR. MORRIS: Can we pull up the next</p> <p>19 exhibit, please, Exhibit Number 5, which is</p> <p>20 Bates stamped Scott 18 and start at the</p> <p>21 bottom.</p> <p>22 (Exhibit 5 introduced.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Do you recall receiving this email</p> <p>25 from Mr. Scott on January 31st, in the</p>

<p>Page 340</p> <p>1 Dondero - 6-1-2021</p> <p>2 afternoon?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know why Mr. Scott gave</p> <p>5 notice of his resignation at that time?</p> <p>6 MR. TAYLOR: Objection, calls for</p> <p>7 speculation.</p> <p>8 A. No. It – you would have to</p> <p>9 answer – I have my own speculation, but you</p> <p>10 would have to ask him.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ever have a conversation</p> <p>13 with Mr. Scott where he informed you of the</p> <p>14 reasons for his decision to give notice of his</p> <p>15 resignation?</p> <p>16 MR. TAYLOR: Objection, calls for</p> <p>17 hearsay.</p> <p>18 A. I knew he was suffering from anxiety</p> <p>19 and health issues regarding the challenges and</p> <p>20 the confrontation.</p> <p>21 MR. MORRIS: I move to strike.</p> <p>22 I just want you to listen carefully</p> <p>23 to my question, sir.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Did Mr. Scott tell you why he had</p>	<p>Page 341</p> <p>1 Dondero - 6-1-2021</p> <p>2 decided to give notice of his intent to resign?</p> <p>3 MR. TAYLOR: Objection, calls for</p> <p>4 hearsay.</p> <p>5 A. He told me he was suffering from</p> <p>6 health and anxiety issues regarding the</p> <p>7 confrontation and the challenges of</p> <p>8 administering the DAF, given the bankruptcy.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. I'm sorry, did you use the word</p> <p>11 "confrontation"?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have an understanding as to</p> <p>14 what confrontation he was referring to?</p> <p>15 MR. TAYLOR: Objection, calls for</p> <p>16 speculation.</p> <p>17 A. I believe it was the interaction,</p> <p>18 challenges of dealing with your firm.</p> <p>19 BY MR. MORRIS:</p> <p>20 Q. Did you have any advanced notice</p> <p>21 that Mr. Scott would be sending this email to</p> <p>22 you?</p> <p>23 A. Not exactly. But a couple days</p> <p>24 beforehand, he did propose it, that he was</p> <p>25 considering resigning.</p>
<p>Page 342</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Did you ever ask him to reconsider?</p> <p>3 A. No.</p> <p>4 Q. You'll see in the third paragraph,</p> <p>5 he states, quote: My resignation will not be</p> <p>6 effective until I approve of the</p> <p>7 indemnification provisions and obtain any and</p> <p>8 all necessary releases.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Did he ever explain to you why his</p> <p>12 release wouldn't become – his resignation</p> <p>13 wouldn't become effective until those things</p> <p>14 happened?</p> <p>15 MR. TAYLOR: Objection, calls for</p> <p>16 hearsay.</p> <p>17 A. No.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Did he ever tell you who he wanted a</p> <p>20 release from?</p> <p>21 MR. TAYLOR: Objection, calls for</p> <p>22 hearsay.</p> <p>23 A. No.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Do you know if there is any</p>	<p>Page 343</p> <p>1 Dondero - 6-1-2021</p> <p>2 agreement today that relates to the</p> <p>3 indemnification and release provisions cited in</p> <p>4 Mr. Scott's email?</p> <p>5 MR. SBAITI: Objection, calls for a</p> <p>6 legal conclusion, lacks foundation, lacks</p> <p>7 relevance.</p> <p>8 A. There's no new agreement that I'm</p> <p>9 aware of. There's an existing agreement from</p> <p>10 when he was originally put in place.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Did you ask for Mr. Scott's</p> <p>13 resignation?</p> <p>14 A. No.</p> <p>15 Q. Did Mr. Scott or anybody acting on</p> <p>16 his behalf ever explain to you or anybody</p> <p>17 acting on your behalf why he wanted the</p> <p>18 indemnification and release provisions?</p> <p>19 MR. TAYLOR: Objection, hearsay.</p> <p>20 A. No.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Did you ever say or suggest to</p> <p>23 Mr. Scott that he had breached his fiduciary</p> <p>24 duties to anybody at any time?</p> <p>25 A. I – I don't – I don't remember if</p>

<p>Page 344</p> <p>1 Dondero - 6-1-2021</p> <p>2 I spoke to anybody else about it.</p> <p>3 Q. I'm just asking if you ever – if</p> <p>4 you or anybody on your behalf ever told that to</p> <p>5 Mr. Scott or anybody acting on Mr. Scott's</p> <p>6 behalf, like Mr. Kane.</p> <p>7 MR. SBAITI: Objection, compound.</p> <p>8 A. I – I believe I testified already</p> <p>9 that I told him he didn't do what was in the</p> <p>10 best interest of the fund.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. And did you ever tell him, in sum or</p> <p>13 substance, that you believed he had breached</p> <p>14 his fiduciary duties to anybody in the world by</p> <p>15 not acting in the best interest of the fund?</p> <p>16 MR. SBAITI: Objection, vague.</p> <p>17 A. I don't recall if I had those</p> <p>18 discussions with somebody else. I mean – no,</p> <p>19 that's – I don't – I don't recall if I've had</p> <p>20 those conversations with anybody else.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Did you ever threaten to sue</p> <p>23 Mr. Scott?</p> <p>24 A. Did I – no.</p> <p>25 Q. Did you ever tell Mr. Scott that you</p>	<p>Page 345</p> <p>1 Dondero - 6-1-2021</p> <p>2 were considering suing him?</p> <p>3 A. I remember telling him he needed to</p> <p>4 do what was in the best interest of the funds.</p> <p>5 That's – that's as far as I remember.</p> <p>6 Q. Did you ever tell Mr. Scott that you</p> <p>7 believed that the fund had claims against him?</p> <p>8 A. I believe anytime you're a trustee</p> <p>9 and you don't do what's in the best interest of</p> <p>10 the funds, you leave yourself open for that,</p> <p>11 potentially.</p> <p>12 Q. I appreciate that that's your</p> <p>13 perspective, but I'm asking you whether you</p> <p>14 ever told Mr. Scott that you believed that the</p> <p>15 fund could assert claims against him.</p> <p>16 A. I don't recall that.</p> <p>17 Q. Do you recall if you ever told</p> <p>18 Mr. Scott that you believed the fund should</p> <p>19 assert claims against him?</p> <p>20 A. No, I don't recall that.</p> <p>21 Q. Okay. Did you ever tell Mr. Scott</p> <p>22 that you believed anybody in the world had</p> <p>23 potential causes of action against him for</p> <p>24 actions or inactions taken on behalf of the DAF</p> <p>25 or CLO HoldCo?</p>
<p>Page 346</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. SBAITI: Objection, vague.</p> <p>3 A. I don't recall that.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. What did you do after you received</p> <p>6 this email?</p> <p>7 Withdrawn.</p> <p>8 Did you do anything in response to</p> <p>9 receiving this email?</p> <p>10 MR. TAYLOR: For the record, we're</p> <p>11 talking about Exhibit 5?</p> <p>12 MR. MORRIS: Yes, I believe so.</p> <p>13 Is that right, La Asia?</p> <p>14 MR. TAYLOR: For that – sorry, 4.</p> <p>15 MS. CANTY: I'm sorry, John. Repeat</p> <p>16 that.</p> <p>17 MR. MORRIS: Is this document on the</p> <p>18 screen Exhibit 5?</p> <p>19 MS. CANTY: It's going to be</p> <p>20 Exhibit 5, but what we had – we had</p> <p>21 premarked them. So, we skipped one in</p> <p>22 sequence. So, when I upload it, it will be</p> <p>23 5.</p> <p>24 MR. MORRIS: Okay. Thank you.</p> <p>25 MS. CANTY: You're welcome.</p>	<p>Page 347</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. MORRIS: Yes, Clay, we're going</p> <p>3 to – ultimately, this will be marked as</p> <p>4 Exhibit 5.</p> <p>5 MR. TAYLOR: Thank you.</p> <p>6 MR. MORRIS: Yeah.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. So, the question, Mr. Dondero, is:</p> <p>9 Do you recall doing anything after receiving</p> <p>10 this email?</p> <p>11 MR. TAYLOR: Objection, vague.</p> <p>12 A. I don't remember doing anything with</p> <p>13 it. I – I didn't know what to do with it. I</p> <p>14 didn't know how the DAF structure worked when</p> <p>15 there was a resignation.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Did you ask Mr. Scott why he chose</p> <p>18 to send it to you?</p> <p>19 A. No.</p> <p>20 Q. Did you forward it to anybody?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you notify anybody that you had</p> <p>23 received this?</p> <p>24 A. I – I don't remember.</p> <p>25 MR. MORRIS: Can we scroll up to</p>



<p>Page 348</p> <p>1 Dondero - 6-1-2021</p> <p>2 Mr. Dondero's response?</p> <p>3 (Scrolling.)</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. You can see --</p> <p>6 MR. MORRIS: That's perfect right</p> <p>7 there.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. You can see in the first sentence of</p> <p>10 Mr. Scott's email there's a reference to</p> <p>11 resigning and divesting. Do you see that? I'm</p> <p>12 summarizing.</p> <p>13 A. Yes.</p> <p>14 Q. And you responded, and you requested</p> <p>15 clarification that -- the next morning; is that</p> <p>16 fair?</p> <p>17 That's the first question.</p> <p>18 A. Yes.</p> <p>19 Q. And then you tried to explain to</p> <p>20 Mr. Scott what your view was of the phrase</p> <p>21 "divestment" or "divest."</p> <p>22 Do I have that right?</p> <p>23 A. Yes. Divest has a different meaning</p> <p>24 in investments than it does, I guess, in legal</p> <p>25 structuring; and I just wanted to make sure</p>	<p>Page 349</p> <p>1 Dondero - 6-1-2021</p> <p>2 you -- you didn't mean liquidation of the</p> <p>3 assets.</p> <p>4 Q. Okay. That's what I'm getting to.</p> <p>5 MR. MORRIS: So can we scroll up to</p> <p>6 Mr. Scott's response?</p> <p>7 (Scrolling.)</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. And Mr. Scott tried to clarify why</p> <p>10 he -- he used the word "divest." Do you see</p> <p>11 that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: And then if we can</p> <p>15 scroll up to your response.</p> <p>16 (Scrolling.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you see your response says: What</p> <p>19 does that mean? Quote, you need to tell me</p> <p>20 ASAP that you have no intent to divest assets.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Why did you write that?</p> <p>24 A. It was unpredictable -- some of his</p> <p>25 behavior was unpredictable at this point. I</p>
<p>Page 350</p> <p>1 Dondero - 6-1-2021</p> <p>2 just wanted to make sure he wasn't liquidating</p> <p>3 or intending to liquidate the portfolio.</p> <p>4 Q. What interest did you have in making</p> <p>5 sure that Mr. Scott didn't liquidate the</p> <p>6 portfolio?</p> <p>7 A. It could materially damage the value</p> <p>8 of the DAF and its ability to continue its</p> <p>9 mission as a charitable entity.</p> <p>10 Q. Had Mr. Scott ever divested assets</p> <p>11 before?</p> <p>12 MR. TAYLOR: Objection, vague.</p> <p>13 A. Well, by giving up the</p> <p>14 11 million-dollar disclaim against the debtor,</p> <p>15 he divested an 11 million-dollar asset.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Anything else?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. When was the last time you</p> <p>20 communicated with Mr. Scott?</p> <p>21 A. I sent him a Happy Birthday text a</p> <p>22 couple days ago.</p> <p>23 Q. And when was the last time you spoke</p> <p>24 with him?</p> <p>25 A. It's been a couple months.</p>	<p>Page 351</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Is the last time you spoke to him at</p> <p>3 around the time that he gave notice of his</p> <p>4 intent to resign?</p> <p>5 A. No. It was about a month after</p> <p>6 that.</p> <p>7 Q. Mr. Patrick replaced Mr. Scott as</p> <p>8 the managing member of the DAF GP and as the</p> <p>9 director of the affiliated DAF entities and CLO</p> <p>10 HoldCo, correct?</p> <p>11 MR. SBAITL: Objection --</p> <p>12 (Audio distortion.)</p> <p>13 A. Ultimately, yes.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Do you know how Mr. Patrick came to</p> <p>16 replace Mr. Scott?</p> <p>17 MR. TAYLOR: Objection to the extent</p> <p>18 it calls for a legal conclusion.</p> <p>19 A. I -- I found out about it after it</p> <p>20 happened, you know, only from things that Mark</p> <p>21 Patrick told me.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Did you know that it was going to</p> <p>24 happen before the event occurred, before the</p> <p>25 actual replacement occurred?</p>

<p>Page 352</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. TAYLOR: Objection, relevance.</p> <p>3 A. No.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Do you know who – who gave</p> <p>6 Mr. Patrick – withdrawn.</p> <p>7 Do you know anything about the</p> <p>8 circumstances by which Mr. Patrick replaced</p> <p>9 Mr. Scott?</p> <p>10 A. I – only from conversations with</p> <p>11 Mark Patrick after the fact.</p> <p>12 Q. What did Mr. Patrick tell you?</p> <p>13 MR. TAYLOR: Objection, hearsay.</p> <p>14 A. He had struggled to – he had</p> <p>15 struggled to find other candidates or entities.</p> <p>16 He had struggled with D&amp;O insurance around some</p> <p>17 of the alternative candidates.</p> <p>18 And one day, when he was talking to</p> <p>19 Grant Scott, they came to some – I don't know</p> <p>20 who said what to who, but that – why doesn't</p> <p>21 Mark Patrick do it and he has knowledge of the</p> <p>22 structure, he enjoys the charitable giving</p> <p>23 part.</p> <p>24 And unbeknownst to me, they agreed,</p> <p>25 and he sent over the appropriate documentation</p>	<p>Page 353</p> <p>1 Dondero - 6-1-2021</p> <p>2 or transfer of shares of voting–again, I don't</p> <p>3 know how it works specifically–and Grant</p> <p>4 signed it, and Mark Patrick became the trustee.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. So, it's your testimony that, prior</p> <p>7 to the time they signed the documentation</p> <p>8 pursuant to which Patrick replaced Scott, you</p> <p>9 had no knowledge that there were discussions</p> <p>10 underway pursuant to which that would occur?</p> <p>11 A. Correct.</p> <p>12 Q. You mentioned that Mr. Patrick told</p> <p>13 you that they had trouble getting D&amp;O</p> <p>14 insurance.</p> <p>15 Do I have that right?</p> <p>16 A. That was – yeah, that was one of</p> <p>17 the factors with a couple of the candidates.</p> <p>18 Q. And did he tell you who those</p> <p>19 candidates were?</p> <p>20 MR. TAYLOR: Objection, hearsay.</p> <p>21 A. He did at the time. I can't</p> <p>22 remember who they were. One was – one was a</p> <p>23 former Dean Foods executive, I believe; and the</p> <p>24 other was an offshore sole practitioner.</p> <p>25 BY MR. MORRIS:</p>
<p>Page 354</p> <p>1 Dondero - 6-1-2021</p> <p>2 Q. Did he tell you what the</p> <p>3 difficulties were in obtaining D&amp;O insurance?</p> <p>4 A. No.</p> <p>5 Q. Did you ask?</p> <p>6 A. No.</p> <p>7 Q. Do you know where Mr. Patrick got</p> <p>8 the authority to – withdrawn.</p> <p>9 Do you know who determined to</p> <p>10 replace Mr. Scott with Mr. Patrick?</p> <p>11 MR. TAYLOR: Objection to the extent</p> <p>12 it calls for a legal conclusion.</p> <p>13 A. As I testified, I believe it was the</p> <p>14 two of them together.</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. And do you have any understanding as</p> <p>17 to what authority they had to designate</p> <p>18 Mr. Scott's successor?</p> <p>19 MR. TAYLOR: Objection, calls for a</p> <p>20 legal conclusion.</p> <p>21 A. I – I believed, between the two of</p> <p>22 them, they knew how the structure worked, and I</p> <p>23 believed between the two of them, they had</p> <p>24 authority – believed they had authority, and</p> <p>25 that's why they effectuated it.</p>	<p>Page 355</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Okay. Was Mr. Patrick ever employed</p> <p>4 by HCMLP?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know what period of time he</p> <p>7 was employed by HCMLP?</p> <p>8 A. He's been there for quite a while.</p> <p>9 I mean, he was there for quite a while. I</p> <p>10 believe over a decade.</p> <p>11 Q. And what positions did he hold, if</p> <p>12 you recall?</p> <p>13 A. He headed up our tax department. I</p> <p>14 don't remember him having any position other</p> <p>15 than that or before that.</p> <p>16 Q. Is he a lawyer, to the best of your</p> <p>17 knowledge?</p> <p>18 A. He's – he's a tax lawyer, yeah.</p> <p>19 Q. And do you know if he's employed</p> <p>20 today?</p> <p>21 A. I – yes.</p> <p>22 Q. Do you know where he's employed?</p> <p>23 A. Yes.</p> <p>24 Q. Where do you understand Mr. Patrick</p> <p>25 is employed?</p>

<p>Page 356</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. At SkyBridge.</p> <p>3 Q. Do you know where SkyBridge's</p> <p>4 offices are located?</p> <p>5 A. Yes.</p> <p>6 Q. Where are they located?</p> <p>7 A. On McKinney Avenue. I believe it's</p> <p>8 2515.</p> <p>9 Q. Is that the same suite of offices</p> <p>10 where your office is located?</p> <p>11 MR. SBAITl: Objection, vague.</p> <p>12 A. It's not the same floor. We – we</p> <p>13 left, as you know, the Highland offices</p> <p>14 suddenly, and so until we establish permanent</p> <p>15 office locations, they're located there, but I</p> <p>16 expect they will be relocating in the</p> <p>17 not-too-distant future.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. Did you have any discussions with</p> <p>20 Mr. Patrick concerning the positions he was</p> <p>21 inheriting from Mr. Scott before he agreed to</p> <p>22 accept them?</p> <p>23 A. No.</p> <p>24 Q. Do you have any written or oral</p> <p>25 agreements with Mr. Patrick of any kind?</p>	<p>Page 357</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. SBAITl: Objection –</p> <p>3 MR. TAYLOR: Objection, vague.</p> <p>4 A. Yeah, not that I know of, but I'm</p> <p>5 not sure what you're asking.</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. All right. Do you have any written</p> <p>8 oral agreements of any kind with Mr. Patrick</p> <p>9 pertaining to his role as an authorized</p> <p>10 representative of any of the DAF entities or</p> <p>11 CLO HoldCo, Ltd.?</p> <p>12 MR. TAYLOR: Objection, vague.</p> <p>13 A. I do not, no.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Do you know if Mr. Patrick has any</p> <p>16 agreement with any of the DAF entities or CLO</p> <p>17 HoldCo, Ltd., other than those set forth in the</p> <p>18 limited partnership agreement and the Amended</p> <p>19 and Restated Limited Liability Company</p> <p>20 Agreement for the general partnership?</p> <p>21 A. I don't know of any.</p> <p>22 Q. Okay. So, there was almost a</p> <p>23 two-year period between the date that Mr. Scott</p> <p>24 sent his notice to you of his intent to resign</p> <p>25 and Mr. Patrick's replacement of Mr. Scott at</p>
<p>Page 358</p> <p>1 Dondero - 6-1-2021</p> <p>2 the end of March. Do I have that right?</p> <p>3 MR. TAYLOR: Objection. I think you</p> <p>4 said two-year period.</p> <p>5 MR. MORRIS: If I did, let me</p> <p>6 restate it.</p> <p>7 BY MR. MORRIS:</p> <p>8 Q. There was approximately a two-month</p> <p>9 period between the time that Mr. Scott sent his</p> <p>10 notice to you of his intention to resign and</p> <p>11 Mr. Patrick's replacement at the end of</p> <p>12 March 2021. Do I have that right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Are you aware that during</p> <p>15 that interim period, Mr. Patrick gave certain</p> <p>16 instructions to Mr. Scott?</p> <p>17 MR. TAYLOR: Objection, calls for</p> <p>18 hearsay.</p> <p>19 MR. SBAITl: Lacks foundation.</p> <p>20 A. I – I don't know specifically.</p> <p>21 BY MR. MORRIS:</p> <p>22 Q. Do you know generally? Are you</p> <p>23 aware of any instructions that Mr. –</p> <p>24 withdrawn.</p> <p>25 Can I call that period between</p>	<p>Page 359</p> <p>1 Dondero - 6-1-2021</p> <p>2 January 31st and the time that Mr. Patrick</p> <p>3 formally replaced Mr. Scott as "the interim</p> <p>4 period"? Is that okay?</p> <p>5 A. Sure.</p> <p>6 Q. Okay. Did you ever learn at any</p> <p>7 time during the interim period that Mr. Patrick</p> <p>8 was giving Mr. Scott instructions with respect</p> <p>9 to the duties and responsibilities concerning</p> <p>10 the DAF and CLO HoldCo?</p> <p>11 MR. SBAITl: Objection, assumes</p> <p>12 facts not in evidence.</p> <p>13 A. Not that I recall.</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Okay. Did you communicate with</p> <p>16 Mr. Scott at all during the interim period</p> <p>17 other than the birthday text that you</p> <p>18 mentioned?</p> <p>19 MR. SBAITl: Objection, misstates</p> <p>20 testimony.</p> <p>21 A. I don't – I don't recall. I mean,</p> <p>22 I know I've had some conversations with him,</p> <p>23 yeah, about that – I have a house in Aspen</p> <p>24 but – and we had some conversations about</p> <p>25 Aspen and skiing and stuff like that, but I</p>

<p>Page 360</p> <p>1 Dondero - 6-1-2021</p> <p>2 don't remember – I don't remember</p> <p>3 specifically –</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Did – did –</p> <p>6 A. – anything else.</p> <p>7 Q. – Mr. Patrick –</p> <p>8 I apologize, Mr. Dondero. Were you</p> <p>9 finished?</p> <p>10 A. Yeah, I'm done.</p> <p>11 Q. Okay. Did Mr. Patrick inform you of</p> <p>12 any issues that were being raised that needed</p> <p>13 to be addressed with Mr. Scott during the</p> <p>14 interim period?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Did you ever instruct Mr. Patrick on</p> <p>17 what to tell Mr. Scott with respect to any</p> <p>18 matter concerning any of the DAF entities or</p> <p>19 CLO HoldCo during the interim period?</p> <p>20 A. Not that I recall.</p> <p>21 Q. Are you familiar with the phrase</p> <p>22 "adherence agreement"?</p> <p>23 A. No.</p> <p>24 MR. MORRIS: Can we please put up</p> <p>25 the next exhibit, which we'll mark as</p>	<p>Page 361</p> <p>1 Dondero - 6-1-2021</p> <p>2 Exhibit 6, Grant Scott, beginning at Bates</p> <p>3 No. 85.</p> <p>4 (Exhibit 6 introduced.)</p> <p>5 MR. MORRIS: And if we could –</p> <p>6 BY MR. MORRIS:</p> <p>7 Q. Did you ever learn that there was a</p> <p>8 point in time when the debtor was requesting</p> <p>9 that CLO HoldCo, Ltd., enter into an adherence</p> <p>10 agreement?</p> <p>11 A. No.</p> <p>12 MR. MORRIS: Can we scroll up a</p> <p>13 little bit, please?</p> <p>14 (Scrolling.)</p> <p>15 MR. MORRIS: And just a little</p> <p>16 further.</p> <p>17 (Scrolling.)</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. And do you see that Grant Scott</p> <p>20 forwards it to Mark Patrick and says, "This</p> <p>21 relates to the second issue from the debtor"?</p> <p>22 A. Yes.</p> <p>23 MR. MORRIS: And can you scroll up a</p> <p>24 little more?</p> <p>25 (Scrolling.)</p>
<p>Page 362</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. And you see Mr. Patrick's</p> <p>4 instruction, "Do not sign the adherence</p> <p>5 agreement from the debtor. The successor will</p> <p>6 address this"?</p> <p>7 A. Yes.</p> <p>8 Q. Do you have any knowledge that</p> <p>9 Mr. Patrick instructed Mr. Scott on March 2nd,</p> <p>10 2001, not to sign an adherence agreement from</p> <p>11 the debtor?</p> <p>12 A. I have no knowledge prior to this.</p> <p>13 Q. Okay.</p> <p>14 MR. MORRIS: Can you scroll to the</p> <p>15 top?</p> <p>16 (Scrolling.)</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Do you see Mr. Patrick further</p> <p>19 instructed Mr. Scott on March 2nd to, quote,</p> <p>20 "Stand down on any communication," close quote?</p> <p>21 A. Yes.</p> <p>22 Q. Were you aware that Mr. Patrick had</p> <p>23 instructed Mr. Scott to stand down?</p> <p>24 A. No.</p> <p>25 Q. Did you ever tell Mr. Patrick to</p>	<p>Page 363</p> <p>1 Dondero - 6-1-2021</p> <p>2 instruct Mr. Scott to stand down?</p> <p>3 A. No.</p> <p>4 Q. Do you have any understanding as to</p> <p>5 where Mr. Patrick obtained the authority to</p> <p>6 instruct Mr. Scott to stand down?</p> <p>7 MR. SBAITI: Objection, vague,</p> <p>8 assumes facts not in evidence.</p> <p>9 A. I – I wouldn't view it as an</p> <p>10 authority issue. I think they had a long-term</p> <p>11 relationship, friendship, working relationship</p> <p>12 with regard to the DAF; and I think Mark was</p> <p>13 giving him advice.</p> <p>14 MR. MORRIS: Okay. It's 12:20 New</p> <p>15 York time. I'd like to just take a short</p> <p>16 break until 12:30, and I shouldn't have too</p> <p>17 much more left.</p> <p>18 MR. TAYLOR: Okay.</p> <p>19 (Recess held 11:19a-11:31a.)</p> <p>20 MR. MORRIS: Okay. Hopefully just</p> <p>21 15 or 20 minutes more. A half hour at</p> <p>22 most, I promise.</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. Are you ready to proceed,</p> <p>25 Mr. Dondero?</p>

<p>Page 364</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. Yes.</p> <p>3 Q. You've told me that you expressed to</p> <p>4 Mr. Scott--and I'm, you know,</p> <p>5 paraphrasing--that you expressed to Mr. Scott</p> <p>6 your concerns with respect to his -- certain of</p> <p>7 the decisions that he made during the course of</p> <p>8 the bankruptcy.</p> <p>9 Do I have that right? Is that fair?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know whether anybody else</p> <p>12 besides yourself expressed any concerns to</p> <p>13 Mr. Scott concerning any of the decisions that</p> <p>14 he made during the post-petition period?</p> <p>15 MR. SBAITI: Objection, vague.</p> <p>16 A. I -- I don't recall.</p> <p>17 BY MR. MORRIS:</p> <p>18 Q. Are you aware of anybody other than</p> <p>19 yourself telling Mr. Scott, in sum or</p> <p>20 substance, that any of the decisions he made</p> <p>21 post-petition were inappropriate or not in the</p> <p>22 best interests of the DAF or CLO HoldCo, Ltd.?</p> <p>23 A. I don't know.</p> <p>24 Q. Okay. You're not aware of anybody;</p> <p>25 is that fair?</p>	<p>Page 365</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. Not as I sit here today.</p> <p>3 Q. Okay. We talked earlier about the</p> <p>4 suggestion -- and again, if I get this wrong,</p> <p>5 just correct me.</p> <p>6 But I think you testified that</p> <p>7 implicit in your conversations with Mr. Scott</p> <p>8 was your belief that he wasn't acting in the</p> <p>9 best interests of the DAF and CLO HoldCo, Ltd.,</p> <p>10 and had breached his fiduciary duties; is that</p> <p>11 fair?</p> <p>12 A. I think I testified that I didn't</p> <p>13 use the word "fiduciary duties" but -- I don't</p> <p>14 recall using those words, but I do recall</p> <p>15 stating that he was making decisions that</p> <p>16 weren't in the best interest of the fund.</p> <p>17 Q. Okay. And I appreciate the</p> <p>18 clarification and -- I appreciate the</p> <p>19 clarification.</p> <p>20 Do you have your own personal belief</p> <p>21 as to whom Mr. Scott owed fiduciary duties to?</p> <p>22 MR. SBAITI: Objection, vague.</p> <p>23 MR. MORRIS: Withdrawn.</p> <p>24 I'm going to try and do this a</p> <p>25 different way.</p>
<p>Page 366</p> <p>1 Dondero - 6-1-2021</p> <p>2 Ms. Canty, can we please put back up</p> <p>3 on the screen Exhibit 1?</p> <p>4 (Exhibit 1 on the screen.)</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Can you see that, sir?</p> <p>7 A. Yes.</p> <p>8 Q. Is there any entity on this</p> <p>9 Exhibit 1 that you do not believe Mr. Scott</p> <p>10 owed a fiduciary duty to prior to the time of</p> <p>11 his resignation in late March 2021?</p> <p>12 MR. SBAITI: Object to the extent it</p> <p>13 calls for a legal conclusion.</p> <p>14 A. Yeah. I -- I can't answer that</p> <p>15 question.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Well, do you believe that Mr. Scott</p> <p>18 owed a fiduciary duty to the three entities</p> <p>19 that have in their name "Charitable DAF"?</p> <p>20 MR. SBAITI: Same objection.</p> <p>21 A. Again, regardless of where the</p> <p>22 assets are held, he has a responsibility, in my</p> <p>23 mind, as the trustee or the managing member, to</p> <p>24 optimize those assets and protect those assets</p> <p>25 and to efficiently, effectively administer</p>	<p>Page 367</p> <p>1 Dondero - 6-1-2021</p> <p>2 expenses.</p> <p>3 BY MR. MORRIS:</p> <p>4 Q. I appreciate that. I'm just asking</p> <p>5 you to whom he owes the duty to do those</p> <p>6 things, if you have an understanding. I'm</p> <p>7 just -- I'm not asking for a legal conclusion.</p> <p>8 I'm asking you if you have an understanding as</p> <p>9 to whom he owes those duties.</p> <p>10 A. Not specifically.</p> <p>11 Q. Okay. Did you ever discuss at any</p> <p>12 time with Mr. Patrick your views concerning</p> <p>13 Mr. Scott's decision to withdraw the objection</p> <p>14 to the HarbourVest Settlement?</p> <p>15 MR. SBAITI: Objection, vague, lacks</p> <p>16 foundation.</p> <p>17 A. I don't -- I don't specifically</p> <p>18 recall. It's -- I'm willing to be refreshed,</p> <p>19 but I -- I don't specifically recall, but</p> <p>20 that's -- yeah, I don't specifically recall.</p> <p>21 It's not -- I don't want to speculate.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. I don't want you to speculate,</p> <p>24 either.</p> <p>25 Do you have any recollection of --</p>



<p>Page 368</p> <p>1 Dondero - 6-1-2021</p> <p>2 at all of ever discussing with Mr. Patrick your</p> <p>3 views as to Mr. Scott's decision to withdraw</p> <p>4 the objection to the HarbourVest Settlement?</p> <p>5 MR. TAYLOR: Objection, asked and</p> <p>6 answered.</p> <p>7 A. Yeah, I don't recall.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Did you – do you have any</p> <p>10 recollection at all of ever discussing with</p> <p>11 Mr. Patrick your views concerning Mr. Scott's</p> <p>12 decision to enter into the settlement agreement</p> <p>13 on behalf of CLO HoldCo?</p> <p>14 A. I don't recall.</p> <p>15 Q. I'm sorry. Are you – yeah, are you</p> <p>16 aware that CLO HoldCo and the DAF, Ltd.,</p> <p>17 commenced the lawsuit against the debtor and</p> <p>18 others in the United States District Court for</p> <p>19 the Northern District of Texas?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 MR. MORRIS: Can we put that</p> <p>23 complaint up on the screen and mark it as</p> <p>24 Exhibit 7, I believe?</p> <p>25 (Exhibit 7 introduced.)</p>	<p>Page 369</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. I'll just represent to you that this</p> <p>4 is the first page of the complaint. If you</p> <p>5 need to refer to it for any purpose, just let</p> <p>6 me know.</p> <p>7 But I'm going to start with the</p> <p>8 question of, have you ever seen a copy of the</p> <p>9 complaint that was filed by the Charitable DAF</p> <p>10 Fund, L.P., and CLO HoldCo, Ltd., against the</p> <p>11 debtor and certain other entities?</p> <p>12 A. Yes.</p> <p>13 Q. When did you see the complaint for</p> <p>14 the first time, that you recall?</p> <p>15 MR. TAYLOR: Objection, vague.</p> <p>16 A. Near final versions before it was</p> <p>17 filed.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. So you saw – you saw versions of</p> <p>20 the complaint before it was filed. Do I have</p> <p>21 that right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Did you participate in any</p> <p>24 discussions concerning the substance of the</p> <p>25 complaint before it was filed?</p>
<p>Page 370</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. TAYLOR: I'm just going to</p> <p>3 caution the witness: You can tell him if</p> <p>4 you participated in any conversations; but</p> <p>5 to the extent that you had conversations</p> <p>6 with any attorneys who were acting as</p> <p>7 lawyers, please do not go into the</p> <p>8 substance of those conversations.</p> <p>9 A. Yeah. I mean, yes, I had</p> <p>10 conversations with attorneys.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Which attorneys did you speak with</p> <p>13 about this complaint before it was filed?</p> <p>14 A. Mazin. I can't remember – I can't</p> <p>15 remember – I talked to a lot of attorneys. I</p> <p>16 can't remember – I can't remember besides</p> <p>17 Mazin.</p> <p>18 Q. Okay. Now, Mazin doesn't represent</p> <p>19 you personally, does he?</p> <p>20 A. No.</p> <p>21 Q. Can you please tell me everything</p> <p>22 you discussed with Mazin concerning this</p> <p>23 complaint?</p> <p>24 MR. TAYLOR: Objection,</p> <p>25 attorney-client privilege.</p>	<p>Page 371</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. SBAITI: Well, I'm also – DAF</p> <p>3 is asserting work-product privilege and</p> <p>4 joint-interest privilege regarding</p> <p>5 communication through DAF with us.</p> <p>6 MR. MORRIS: I'm sorry. I'm sorry.</p> <p>7 I'm having a little trouble hearing you. I</p> <p>8 think I heard attorney work product. What</p> <p>9 over privileges are being asserted here?</p> <p>10 MR. SBAITI: Joint interest. As</p> <p>11 advisor to the DAF, he provided us some</p> <p>12 information that we used and helped us</p> <p>13 identify information that we were using.</p> <p>14 So, helping his advisee's counsel perform</p> <p>15 their duties falls under the work-product</p> <p>16 privilege. We're claiming work-product</p> <p>17 privilege over the content of his</p> <p>18 conversation.</p> <p>19 MR. MORRIS: Okay. Did I hear</p> <p>20 somebody say attorney-client privilege,</p> <p>21 too?</p> <p>22 MR. TAYLOR: I had said that, but I</p> <p>23 was just making sure that Mazin jumped in</p> <p>24 with his objections –</p> <p>25 (Whereupon, the court reporter's</p>

<p>Page 372</p> <p>1 Dondero - 6-1-2021</p> <p>2 computer crashed, calls were made, and an</p> <p>3 iPad was engaged to finish the deposition.)</p> <p>4 MR. MORRIS: All right.</p> <p>5 Mr. Dondero, can you hear me?</p> <p>6 THE WITNESS: Yes.</p> <p>7 MR. MORRIS: Mr. Court Reporter, can</p> <p>8 you hear me?</p> <p>9 THE REPORTER: Yes, sir.</p> <p>10 BY MR. MORRIS:</p> <p>11 Q. Mr. Dondero, did you provide any</p> <p>12 comments to the Sbaiti firm on any draft of the</p> <p>13 complaint before it was filed?</p> <p>14 MR. SBAITI: You can answer that</p> <p>15 question yes or no. I'll just instruct the</p> <p>16 witness not to answer with any content of</p> <p>17 any kind on the basis – and we're</p> <p>18 instructing him not to answer on the basis</p> <p>19 of work-product privilege and</p> <p>20 joint-interest privilege.</p> <p>21 A. Some.</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Can you disclose for me all of the</p> <p>24 information and comments you provided that –</p> <p>25 to the draft complaints?</p>	<p>Page 373</p> <p>1 Dondero - 6-1-2021</p> <p>2 MR. SBAITI: Instruct the witness</p> <p>3 not to answer on the basis of work-product</p> <p>4 privilege and joint-interest privilege.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. Are you going to follow Counsel's</p> <p>7 advice, Mr. Dondero?</p> <p>8 A. Yes.</p> <p>9 Q. Did you provide any conceptual or</p> <p>10 strategic ideas about what claims to pursue to</p> <p>11 the Sbaiti firm prior to the time the complaint</p> <p>12 was filed?</p> <p>13 MR. SBAITI: Can you repeat the</p> <p>14 question?</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. Did you provide any thoughts or</p> <p>17 ideas as to what claims should be pursued in</p> <p>18 this complaint prior to the time it was filed?</p> <p>19 MR. TAYLOR: I'm going to first</p> <p>20 lodge an objection as to vague, and I</p> <p>21 believe Mazin has some other objection.</p> <p>22 MR. SBAITI: Yeah. I would – I</p> <p>23 will say the same objection, and we will</p> <p>24 object to any content of the – within the</p> <p>25 attorney-client work-product and</p>
<p>Page 374</p> <p>1 Dondero - 6-1-2021</p> <p>2 joint-interest privilege.</p> <p>3 A. Not that I recall.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Did you provide any facts that are</p> <p>6 set forth in the complaint?</p> <p>7 Withdrawn.</p> <p>8 Did you – did you provide to the</p> <p>9 Sbaiti firm any facts that are reflected in the</p> <p>10 final version of the complaint?</p> <p>11 MR. SBAITI: Mr. Dondero, you can</p> <p>12 answer that question yes or no; otherwise,</p> <p>13 we instruct you not to answer on the basis</p> <p>14 of – the content on the basis of</p> <p>15 attorney-client, work-product and</p> <p>16 joint-interest privilege.</p> <p>17 A. Not that I recall.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. You don't recall providing any facts</p> <p>20 at all?</p> <p>21 A. Not specifically.</p> <p>22 Q. Did you provide any general facts or</p> <p>23 ideas to the Sbaiti firm in connection with</p> <p>24 your review of the drafts of the complaint?</p> <p>25 MR. SBAITI: Same instruction, same</p>	<p>Page 375</p> <p>1 Dondero - 6-1-2021</p> <p>2 objections.</p> <p>3 A. Maybe some.</p> <p>4 BY MR. MORRIS:</p> <p>5 Q. Okay. Can you describe those for</p> <p>6 me, please?</p> <p>7 MR. SBAITI: I'll instruct you not</p> <p>8 to answer that on the basis of</p> <p>9 attorney-client work-product privilege and</p> <p>10 joint-interest privilege.</p> <p>11 BY MR. MORRIS:</p> <p>12 Q. Are you going to follow Counsel's</p> <p>13 advice, Mr. Dondero?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have any discussions with</p> <p>16 the Sbaiti firm concerning whether or not to</p> <p>17 name James Seery as a defendant in the original</p> <p>18 complaint?</p> <p>19 MR. SBAITI: I'll instruct the</p> <p>20 witness not to answer on the basis of</p> <p>21 attorney-client, work-product and</p> <p>22 joint-interest privilege as doing so would</p> <p>23 reveal the contents of such communication.</p> <p>24 BY MR. MORRIS:</p> <p>25 Q. Can you just answer yes or no?</p>

<p style="text-align: right;">Page 376</p> <p>1 Dondero - 6-1-2021</p> <p>2 A. No.</p> <p>3 Q. You didn't have -- that wasn't part</p> <p>4 of any of the discussions you had prior to the</p> <p>5 time the complaint was filed?</p> <p>6 MR. SBAITI: Same instruction. Just</p> <p>7 don't answer.</p> <p>8 THE WITNESS: So please don't</p> <p>9 answer, right, or don't answer --</p> <p>10 MR. SBAITI: Don't answer.</p> <p>11 THE WITNESS: Okay.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Are you going to follow Counsel's</p> <p>14 advice?</p> <p>15 A. Yes.</p> <p>16 Q. Did you -- did you suggest that</p> <p>17 Mr. Seery should be named as a defendant in</p> <p>18 this lawsuit to the Sbaiti firm prior to the</p> <p>19 time it was filed?</p> <p>20 MR. SBAITI: Instruct the witness</p> <p>21 not to answer on the basis of</p> <p>22 attorney-client work product and</p> <p>23 joint-interest privilege, as doing so would</p> <p>24 reveal the contents of those</p> <p>25 communications.</p>	<p style="text-align: right;">Page 377</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Are you going to follow Counsel's</p> <p>4 advice?</p> <p>5 A. Yes.</p> <p>6 Q. Did you know, prior to the time the</p> <p>7 complaint was filed, that the Sbaiti firm</p> <p>8 intended to file a motion for leave to amend</p> <p>9 their complaint to add Mr. Seery as a</p> <p>10 defendant?</p> <p>11 MR. SBAITI: You can answer that</p> <p>12 question yes or no, but, otherwise, it will</p> <p>13 reveal the content of any underlying</p> <p>14 communication on the basis of</p> <p>15 attorney-client work product, or</p> <p>16 joint-interest privilege.</p> <p>17 A. No.</p> <p>18 BY MR. MORRIS:</p> <p>19 Q. When did you learn that the Sbaiti</p> <p>20 firm filed a motion for leave to amend their</p> <p>21 complaint to add Mr. Seery as a defendant?</p> <p>22 A. I don't -- I don't recall.</p> <p>23 Q. Do you recall whether you had any</p> <p>24 conversations with anybody in the world at any</p> <p>25 time prior to the time that motion was filed</p>
<p style="text-align: right;">Page 378</p> <p>1 Dondero - 6-1-2021</p> <p>2 regarding the possibility of filing a motion</p> <p>3 for leave to amend the pleading to add</p> <p>4 Mr. Seery as a defendant?</p> <p>5 MR. SBAITI: Objection, vague, lacks</p> <p>6 foundation; and instruct the witness not to</p> <p>7 reveal the content of any communications on</p> <p>8 the basis protected under the</p> <p>9 attorney-client, work-product,</p> <p>10 common-interest privilege.</p> <p>11 A. I don't recall.</p> <p>12 BY MR. MORRIS:</p> <p>13 Q. Okay. Did you ever discuss with</p> <p>14 Mr. Patrick the topic of whether or not</p> <p>15 Mr. Seery should be sued?</p> <p>16 A. No.</p> <p>17 Q. Did you ever discuss with the Sbaiti</p> <p>18 firm the topic of whether Mr. Seery should be</p> <p>19 sued?</p> <p>20 MR. SBAITI: Instruct the witness</p> <p>21 not to answer on the basis of attorney work</p> <p>22 product -- attorney-client, and</p> <p>23 common-interest privilege as answering</p> <p>24 would reveal the contents of such</p> <p>25 communications, if they occurred.</p>	<p style="text-align: right;">Page 379</p> <p>1 Dondero - 6-1-2021</p> <p>2 BY MR. MORRIS:</p> <p>3 Q. Are you going to follow Counsel's</p> <p>4 advise?</p> <p>5 A. Yes.</p> <p>6 MR. MORRIS: I think I may be done.</p> <p>7 Can we just take a three-minute</p> <p>8 break and let me just check my notes?</p> <p>9 MR. SBAITI: Sure.</p> <p>10 (Recess held.)</p> <p>11 MR. MORRIS: All right. I have no</p> <p>12 further questions. I would request the</p> <p>13 production of a privilege log reflecting</p> <p>14 the communications, if any, between</p> <p>15 Mr. Dondero and the Sbaiti firm; but,</p> <p>16 otherwise, I have nothing further at this</p> <p>17 time.</p> <p>18 MR. SBAITI: Okay.</p> <p>19 MR. MORRIS: Again, I appreciate</p> <p>20 your time, Mr. Dondero.</p> <p>21 MR. SBAITI: We'll reserve our</p> <p>22 questions.</p> <p>23 MR. MORRIS: Okay. Thank you,</p> <p>24 everybody.</p> <p>25 MR. SBAITI: Thank you. Take care.</p>

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2 THE REPORTER: Mr. Sbaiti, do you

3 guys need a copy of this deposition?

4 MR. SBAITI: Yeah, we would just

5 need a PTX of the deposition transcript and

6 soft copies of the exhibits. Are you going

7 to send something to the witness to read

8 and sign? I think you could send it to him

9 either directly or to Mr. Taylor on his

10 behalf.

11 (Time Noted: 12:01 p.m.)

12

13

14

15 JAMES DONDERO

16 Subscribed and sworn to before me

17 this \_\_\_\_ day of \_\_\_\_\_, 2021.

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2 ERRATA SHEET FOR THE TRANSCRIPT OF:

3 Case Name:

4 IN THE UNITED STATES BANKRUPTCY COURT

5 FOR THE NORTHERN DISTRICT OF TEXAS

6 DALLAS DIVISION

7 In re: )

8 HIGHLAND CAPITAL ) Case No.

9 MANAGEMENT, LP, ) 19-34054 L.P.

10 Debtor, ) Chapter 11

11 )

12 HIGHLAND CAPITAL MANAGEMENT, )

13 LP, )

14 )

15 Plaintiff, ) Adversary No.

16 vs. ) 21-03003-sgi

17 JAMES D. DONDERO, )

18 Defendant. )

19 Dep. Date: 06/01/2021

20 Deponent: JAMES DONDERO

21

22 Reason codes:

23 1. To clarify the record.

24 2. To conform to the facts.

25 3. To correct transcription errors.

CORRECTIONS:

Pg.	LN.	Now Reads	Should Read	Reason
17	____	_____	_____	_____
18	____	_____	_____	_____
19	____	_____	_____	_____
20	____	_____	_____	_____
21	____	_____	_____	_____
22	____	_____	_____	_____
23	____	_____	_____	_____
24	____	_____	_____	_____
25	____	_____	_____	_____

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2 CERTIFICATE

3 STATE OF TEXAS )

4 )

5 COUNTY OF ELLIS )

6

7 I, Daniel J. Skur, a Notary Public

8 within and for the State of Texas, do

9 hereby certify:

10 That JAMES DONDERO, the witness whose

11 deposition is hereinbefore set forth, was

12 duly sworn by me and that such deposition

13 is a true record of the testimony given by

14 such witness.

15 That pursuant to Rule 30 of the Federal

16 Rules of Civil Procedure, signature of the

17 witness was reserved by the witness or

18 other party before the conclusion of the

19 deposition;

20 I further certify that I am not

21 related to any of the parties to this

22 action by blood or marriage; and that I am

23 in no way interested in the outcome of this

24 matter.

25 IN WITNESS WHEREOF, I have hereunto

set my hand this 1st day of June, 2021.

\_\_\_\_\_  
Daniel J. Skur  
Notary Public, State of Texas.  
My Commission Expires 7/7/2022  
TSG Reporting, Inc.  
228 East 45th Street, Suite 810  
New York, New York  
(877) 702-9580

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18 \_\_\_\_\_

19 JAMES DONDERO

20

21 SUBSCRIBED AND SWORN BEFORE ME

22 THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2021.

23

24 \_\_\_\_\_

25 (Notary Public) MY COMMISSION EXPIRES: \_\_\_\_\_

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 2 -----I N D E X-----  
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 4 JAMES DONDERO  
 5 Mr. Morris 288  
 6  
 7 \*\*\*\*\*  
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 9 Deposition Exhibits PAGE/LINE  
 10 Exhibit 1 DAF/CLO Holder Structure 290/15  
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 11 Bates No. GScott000007  
 12 Exhibit 2 Amended and Restated 301/6  
 Limited Liability Company  
 13 Agreement of Charitable  
 DAF GP, LLC  
 14 Bates No. PATRICK\_000031  
 through 000035  
 15  
 16 Exhibit 3 Amended and Restated 313/14  
 Investment Advisory  
 17 Agreement  
 Bates No. GScott000325  
 through 000340  
 18  
 19 Exhibit 4 Phone Conference 335/25  
 Invitation For 1/31/2021  
 Bates No. GScott000011  
 20  
 21 Exhibit 5 January/February 2021 339/22  
 Email String Regarding  
 22 Notice of Intent to Resign  
 and Divest From CLO  
 23 HoldCo, Ltd., and Related  
 Entities  
 Bates No. GScott000018  
 24 through 000019  
 25

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 3 Deposition Exhibits PAGE/LINE  
 4 Exhibit 6 March 2021 Email String 361/4  
 Regarding Highland  
 5 Adherence Agreement  
 (Highland CLO Funding) in  
 6 Connection With Transfer  
 of HarbourVest Shares  
 7 Bates No. GScott000085  
 through 000088  
 8  
 9 Exhibit 7 Original Complaint in Re: 368/25  
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 and CLO HoldCo, Ltd., V  
 10 Highland Capital  
 Management, L.P. and  
 11 Others  
 Bates No. GScott000389  
 12 through 000414  
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## **EXHIBIT 98**



DONDERO - 10/29/21

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

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IN RE:

Chapter 11  
HIGHLAND CAPITAL  
MANAGEMENT, L.P., CASE NO.  
19-34054-SGI11

Debtor.

-----  
HIGHLAND CAPITAL MANAGEMENT, L.P.,

Plaintiff,

vs.

Adversary  
Proceeding No.

JAMES D. DONDERO, 21-03003-sgi

Defendant.  
-----

REMOTE VIDEOTAPED DEPOSITION OF

JAMES DONDERO - VOLUME 2

October 29, 2021

Reported by: Susan S. Klinger, RMR-CRR, CSR

Job No. 201874

<p>1 DONDERO - 10/29/21</p> <p>2</p> <p>3</p> <p>4 October 29, 2021</p> <p>5 10:21 a.m.</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Remote Deposition of JAMES DONDERO, held</p> <p>10 before Susan S. Klinger, a Registered Merit</p> <p>11 Reporter and Certified Realtime Reporter of the</p> <p>12 State of Texas.</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 284</p> <p>1 DONDERO - 10/29/21</p> <p>2 A P P E A R A N C E S:</p> <p>3 (All appearances via Zoom.)</p> <p>4 Attorneys for the Reorganized Highland Capital</p> <p>5 Management:</p> <p>6 John Morris, Esq.</p> <p>7 Hayley Winograd, Esq.</p> <p>8 Gregory Demo, Esq.</p> <p>9 PACHULSKI STANG ZIEHL &amp; JONES</p> <p>10 780 Third Avenue</p> <p>11 New York, New York 10017</p> <p>12</p> <p>13 Attorneys for NexPoint Advisors, LP and</p> <p>14 Highland Capital Management Fund Advisors,</p> <p>15 L.P.:</p> <p>16 Davor Rukavina, Esq.</p> <p>17 Thomas Berghman, Esq.</p> <p>18 MUNSCH HARDT KOPF &amp; HARR</p> <p>19 500 North Akard Street</p> <p>20 Dallas, Texas 75201</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p style="text-align: right;">Page 288</p> <p>1 DONDERO - 10/29/21</p> <p>2 PROCEEDINGS</p> <p>3 VIDEOGRAPHER: This marks the</p> <p>4 beginning of Video 1 in Volume 2 of the</p> <p>5 deposition of James Dondero in the matter</p> <p>6 In Re: Highland Capital Management, L.P.</p> <p>7 Today's date is October 29, 2021. The time</p> <p>8 on the video monitor is 10:21 a.m.</p> <p>9 Will the court reporter please swear</p> <p>10 in the witness.</p> <p>11 JAMES DONDERO,</p> <p>12 having been first duly sworn, testified as</p> <p>13 follows:</p> <p>14 MR. MORRIS: Deborah, would you like</p> <p>15 to make a statement?</p> <p>16 MS. DEITSCH-PEREZ: I didn't know if</p> <p>17 you wanted appearances first. Sure. This</p> <p>18 is Deborah Deitsch-Perez from Stinson. I'm</p> <p>19 counsel for Mr. Dondero, Nancy Dondero,</p> <p>20 HCRE and HCMS in this deposition.</p> <p>21 I want to apologize for everybody</p> <p>22 that we're starting late. Mr. Dondero was</p> <p>23 under the weather. It is – he has taken</p> <p>24 something, so he should not have to leave</p> <p>25 the deposition, but if at any point he</p>	<p style="text-align: right;">Page 289</p> <p>1 DONDERO - 10/29/21</p> <p>2 looks green to me, I will ask that we stop</p> <p>3 and reconvene when he is not feeling</p> <p>4 nauseous.</p> <p>5 MR. MORRIS: All right. I would</p> <p>6 like to just begin here. We have counsel</p> <p>7 on the line for all of the defendants, we</p> <p>8 have counsel for the plaintiff, and we have</p> <p>9 counsel for the Highland Litigation Trust,</p> <p>10 and I think that that is everybody who</p> <p>11 is – is supposed to be here, so I would</p> <p>12 like to just begin.</p> <p>13 EXAMINATION</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. Mr. Dondero, can you hear me okay?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And are you feeling well</p> <p>18 enough to begin today's deposition?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. I understand that you are not</p> <p>21 feeling well. And I want you to know that I do</p> <p>22 not want to proceed with this deposition unless</p> <p>23 you believe that you are physically and</p> <p>24 mentally able to participate to the best of</p> <p>25 your ability. Okay? Do you understand that?</p>
<p style="text-align: right;">Page 290</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. So if at any time you don't feel</p> <p>4 like you can continue, I would rather adjourn</p> <p>5 to one day next week to complete the deposition</p> <p>6 rather than forcing you to do something that</p> <p>7 you don't believe you're capable of doing.</p> <p>8 Okay?</p> <p>9 A. Yes. Yes. I did throw up twice</p> <p>10 last night.</p> <p>11 Q. Okay.</p> <p>12 A. I imagine we could go for – let's</p> <p>13 shoot for four hours today, you know, maybe –</p> <p>14 maybe five, I don't know, but if we don't</p> <p>15 finish –</p> <p>16 Q. I don't want to –</p> <p>17 A. – we will do the rest next week.</p> <p>18 Q. Okay. I don't want to put an</p> <p>19 arbitrary time on it. You tell me if you are</p> <p>20 unable to continue. Okay? Is that fair?</p> <p>21 A. Yes. That is my estimate at this</p> <p>22 point.</p> <p>23 Q. Okay. You founded Highland Capital</p> <p>24 Management, L.P.; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 291</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And we are going to refer to that</p> <p>3 entity and that entity only today as Highland;</p> <p>4 is that okay?</p> <p>5 A. Yes.</p> <p>6 Q. When did you found – when did you</p> <p>7 create Highland?</p> <p>8 A. '94.</p> <p>9 Q. And did you serve as Highland's</p> <p>10 president from 1994 until on or around January</p> <p>11 9th, 2020?</p> <p>12 A. Yes.</p> <p>13 Q. Did – can you describe in your own</p> <p>14 words what the business of Highland was while</p> <p>15 you were president?</p> <p>16 A. We were largely below investment</p> <p>17 grade, credit strap, and we diversified over</p> <p>18 the years to become more of an alternative</p> <p>19 asset manager in a variety of formats.</p> <p>20 Q. And –</p> <p>21 MS. DEITSCH-PEREZ: I'm sorry, John,</p> <p>22 one sec. This was set up by someone a lot</p> <p>23 shorter than Mr. Dondero. Let me just take</p> <p>24 one minute to adjust it.</p> <p>25 MR. MORRIS: May I proceed, Deborah?</p>

<p>Page 292</p> <p>1 DONDERO - 10/29/21</p> <p>2 MS. DEITSCH-PEREZ: (Nods head.)</p> <p>3 Q. Okay. Mr. Dondero, at its peak,</p> <p>4 what is the – the largest value of assets that</p> <p>5 Highland had under management while you were</p> <p>6 president?</p> <p>7 A. 35 billion.</p> <p>8 Q. And do you recall what year that</p> <p>9 was?</p> <p>10 A. Not exactly.</p> <p>11 Q. Was it before the 2008 financial</p> <p>12 crisis?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So you were the president of</p> <p>15 Highland for about 25 years; is that right?</p> <p>16 A. Yes, 25, 26, whatever.</p> <p>17 Q. And do you consider yourself to be</p> <p>18 expert in the area of money management?</p> <p>19 A. Yeah, on the things that we focus</p> <p>20 on.</p> <p>21 Q. You are a sophisticated investor;</p> <p>22 right?</p> <p>23 A. Yes. I would believe I'm</p> <p>24 categorized as such.</p> <p>25 Q. And you are a sophisticated money</p>	<p>Page 293</p> <p>1 DONDERO - 10/29/21</p> <p>2 manager; is that fair?</p> <p>3 A. Yes.</p> <p>4 Q. And you manage money on behalf of</p> <p>5 thousands of people; isn't that right?</p> <p>6 A. Yes.</p> <p>7 Q. And as a general matter, you know</p> <p>8 how to read and understand balance sheets,</p> <p>9 don't you?</p> <p>10 A. Yes.</p> <p>11 Q. You have signed promissory –</p> <p>12 promissory notes before, haven't you?</p> <p>13 A. Yes.</p> <p>14 Q. Is it fair to say you have signed</p> <p>15 hundreds of promissory notes during the 25-year</p> <p>16 period that you were the president of Highland?</p> <p>17 A. No.</p> <p>18 Q. Is it fair to say that you signed</p> <p>19 dozens of promissory notes during the time that</p> <p>20 you were president of Highland?</p> <p>21 A. Yeah, dozens is probably fair.</p> <p>22 Q. Okay. And is it fair to say that</p> <p>23 the aggregate principal amount of the</p> <p>24 promissory notes that you signed while you were</p> <p>25 president of Highland likely exceeded</p>
<p>Page 294</p> <p>1 DONDERO - 10/29/21</p> <p>2 \$200 million?</p> <p>3 MS. DEITSCH-PEREZ: Objection to the</p> <p>4 form.</p> <p>5 A. I don't have a basis for knowing</p> <p>6 that.</p> <p>7 Q. You do know that it is more than</p> <p>8 \$100 million, don't you?</p> <p>9 A. No.</p> <p>10 Q. Do you owe today Highland Capital</p> <p>11 Management Services more than \$75 million?</p> <p>12 A. I don't know what the amount is. I</p> <p>13 don't believe it is that much.</p> <p>14 Q. Are the obligations to Highland</p> <p>15 Capital –</p> <p>16 MS. DEITSCH-PEREZ: Hold on. Hold</p> <p>17 on. My connection just disappeared.</p> <p>18 MR. MORRIS: Okay.</p> <p>19 MS. DEITSCH-PEREZ: Okay, I'm back.</p> <p>20 Q. Okay. Did the – did the</p> <p>21 obligations that you have to Highland Capital</p> <p>22 Management Services, are they reflected in</p> <p>23 promissory notes?</p> <p>24 MS. DEITSCH-PEREZ: Could you repeat</p> <p>25 that question?</p>	<p>Page 295</p> <p>1 DONDERO - 10/29/21</p> <p>2 MR. MORRIS: Sure.</p> <p>3 Q. Mr. Dondero, you borrowed money from</p> <p>4 Highland Capital Management Services; correct?</p> <p>5 A. I'm sorry, it sounds like at first</p> <p>6 you were asking me, did Highland Capital</p> <p>7 Services borrow money from Highland. Now</p> <p>8 you're asking me if I borrowed money from</p> <p>9 Services?</p> <p>10 Q. Yeah, let me – let me rephrase the</p> <p>11 question, sir, because if it is not clear, that</p> <p>12 is my fault, and I apologize.</p> <p>13 Did you – have you borrowed money</p> <p>14 from Highland Capital Management Services?</p> <p>15 A. I believe so.</p> <p>16 Q. Okay. Do you know the aggregate</p> <p>17 principal amount that is outstanding today,</p> <p>18 ballpark?</p> <p>19 A. No.</p> <p>20 Q. Are the obligations that you have to</p> <p>21 Highland Capital Management Services reflected</p> <p>22 in promissory notes where you're the maker and</p> <p>23 Highland Capital Management Services is the</p> <p>24 payee?</p> <p>25 A. Please repeat that question.</p>

<p>Page 296</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Are you the maker on promissory</p> <p>3 notes in favor of Highland Capital Management</p> <p>4 Services, Inc.?</p> <p>5 A. I don't know. I believe – I</p> <p>6 believe so, or I believe I have in the past,</p> <p>7 but I don't know.</p> <p>8 Q. Do you have any – any estimate as</p> <p>9 to how much money you owe Highland Capital</p> <p>10 Management Services, Inc. today?</p> <p>11 MS. DEITSCH-PEREZ: Asked and</p> <p>12 answered.</p> <p>13 A. No.</p> <p>14 Q. Can you say if it is more or less</p> <p>15 than \$50 million?</p> <p>16 A. I don't know.</p> <p>17 Q. Can you say if it is more or less</p> <p>18 than \$25 million?</p> <p>19 A. I don't know.</p> <p>20 Q. As a general matter, is it fair to</p> <p>21 say that you know how to read and understand</p> <p>22 promissory notes?</p> <p>23 MS. DEITSCH-PEREZ: Object to the</p> <p>24 form.</p> <p>25 A. In general, yes.</p>	<p>Page 297</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. When you were in control of</p> <p>3 Highland, you personally decided who was hired</p> <p>4 at that company; is that fair?</p> <p>5 A. Sometimes, in senior positions.</p> <p>6 Q. Okay. Did your duties as president</p> <p>7 of Highland include being familiar with the</p> <p>8 debts and obligations that were owed to</p> <p>9 Highland?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I mean, generally.</p> <p>13 Q. Okay. Did you ever do anything to</p> <p>14 familiarize yourself with the debts and</p> <p>15 obligations that were owed to Highland?</p> <p>16 A. Are you referring to the affiliated</p> <p>17 notes or –</p> <p>18 Q. Sure.</p> <p>19 A. – or what – what are –</p> <p>20 Q. I was – I was asking – I</p> <p>21 apologize. I don't mean to step on your words.</p> <p>22 A. No, you just – because I don't</p> <p>23 think Highland had a lot of other obligations</p> <p>24 due from other parties, and the affiliated</p> <p>25 notes in aggregate were always de minimis to</p>
<p>Page 298</p> <p>1 DONDERO - 10/29/21</p> <p>2 Highland than now, at any time.</p> <p>3 Q. It is your – it is your position</p> <p>4 that the affiliate notes to Highland were de</p> <p>5 minimis in amount?</p> <p>6 A. Yes.</p> <p>7 Q. And how do you define de minimus for</p> <p>8 that purpose?</p> <p>9 A. I believe the balance sheet of</p> <p>10 Highland today for the last three years, four</p> <p>11 years, five years has been between 5 and</p> <p>12 \$600 million. I believe the notes have never</p> <p>13 been more than 8 or 10 or 12 percent of that</p> <p>14 number.</p> <p>15 Q. And you believe that 8 or 10 or</p> <p>16 12 percent of Highland's asset base you</p> <p>17 would – you would define as de minimis?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. As – as president of</p> <p>20 Highland, did you ever do anything to</p> <p>21 familiarize yourself with the number and amount</p> <p>22 of affiliate loans that Highland carried on its</p> <p>23 books and records?</p> <p>24 A. Not that I can recall.</p> <p>25 Q. Was there anybody at Highland who</p>	<p>Page 299</p> <p>1 DONDERO - 10/29/21</p> <p>2 was charged with the responsibility of knowing</p> <p>3 the number and amount of affiliate loans that</p> <p>4 Highland carried on its balance sheet?</p> <p>5 A. Sure.</p> <p>6 Q. Can you identify the people who were</p> <p>7 responsible for that?</p> <p>8 A. The people in accounting responsible</p> <p>9 for tracking assets and liabilities in</p> <p>10 preparing all the audited financial statements</p> <p>11 every year and the quarterly unaudited</p> <p>12 financial statements that were prepared and the</p> <p>13 monthly operating reports.</p> <p>14 Q. Can you – can you name any names of</p> <p>15 the people who had the responsibilities that</p> <p>16 you just described?</p> <p>17 A. I think it changed regularly, but it</p> <p>18 would have been people in Frank's group in</p> <p>19 accounting.</p> <p>20 Q. Did Frank have any responsibility</p> <p>21 for knowing and understanding the affiliate</p> <p>22 loans that Highland carried on its balance</p> <p>23 sheet?</p> <p>24 A. Sure. I – as CFO he had to sign</p> <p>25 off on the audited financials and rep letters</p>



<p>Page 300</p> <p>1 DONDERO - 10/29/21</p> <p>2 and – yes.</p> <p>3 Q. And can you – can you identify the</p> <p>4 name of any person in the accounting group in,</p> <p>5 let's say, the three years prior to the</p> <p>6 bankruptcy who had responsibility for knowing</p> <p>7 and understanding the scope of affiliate loans</p> <p>8 that Highland carried on its balance sheet?</p> <p>9 A. No, I would just be speculating but</p> <p>10 it would be – the senior people in Frank's</p> <p>11 group would be responsible for the financial</p> <p>12 statements.</p> <p>13 Q. Are you able to name the people, the</p> <p>14 senior people in Frank's group in the couple of</p> <p>15 years prior to the bankruptcy?</p> <p>16 A. Yes, but I don't know – like</p> <p>17 David Klos was a senior person, Cliff Stoops</p> <p>18 was a senior person. There were a couple</p> <p>19 up-and-comers below them, but who did the</p> <p>20 financials – how Frank assigned the work in</p> <p>21 his group, I have no idea.</p> <p>22 Q. Did you ever ask?</p> <p>23 A. No.</p> <p>24 Q. Do you have any knowledge as you sit</p> <p>25 here today who within Frank's group had</p>	<p>Page 301</p> <p>1 DONDERO - 10/29/21</p> <p>2 responsibility for knowing and understanding</p> <p>3 the affiliate loans that Highland carried on</p> <p>4 its balance sheets?</p> <p>5 A. No.</p> <p>6 Q. And to the best of your knowledge as</p> <p>7 you sit here today, you never personally did</p> <p>8 anything to know and understand the extent and</p> <p>9 scope of the affiliate loans that Highland</p> <p>10 carried on its balance sheet; is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. You appointed Mr. Waterhouse</p> <p>13 as Highland's CFO; is that right?</p> <p>14 A. I think it was appointed and</p> <p>15 recommended by Patrick Boyce, but I agreed with</p> <p>16 the selection.</p> <p>17 Q. And you –</p> <p>18 A. That – (speaking simultaneously.)</p> <p>19 Q. I apologize, are you done?</p> <p>20 A. I'm just saying that was a long time</p> <p>21 ago, but I don't remember the details exactly.</p> <p>22 Q. But you had the authority and you</p> <p>23 used that authority to appoint Frank as CFO;</p> <p>24 correct?</p> <p>25 MS. DEITSCH-PEREZ: There's a lag in</p>
<p>Page 302</p> <p>1 DONDERO - 10/29/21</p> <p>2 the video. I don't know if it matters, but</p> <p>3 for a while Jim was frozen. And I know</p> <p>4 because – since there was voice and no –</p> <p>5 his mouth wasn't moving. So let's just –</p> <p>6 if the videographer sees there is a</p> <p>7 problem, please let us know.</p> <p>8 Q. I –</p> <p>9 A. Yes. I'm sorry, could you just</p> <p>10 repeat the question regarding Frank, please?</p> <p>11 Q. Sure.</p> <p>12 As the president of Highland, did</p> <p>13 you have the authority and did you exercise</p> <p>14 that authority to appoint him as Highland's</p> <p>15 CFO?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Do you recall when you</p> <p>18 appointed Mr. Waterhouse CFO of Highland?</p> <p>19 A. No.</p> <p>20 Q. Was it more than five years prior to</p> <p>21 the bankruptcy?</p> <p>22 A. Yes.</p> <p>23 Q. As the president – during the time</p> <p>24 that you served as president of Highland, did</p> <p>25 you believe that Mr. Waterhouse fulfilled his</p>	<p>Page 303</p> <p>1 DONDERO - 10/29/21</p> <p>2 duties as chief financial officer?</p> <p>3 A. Yes.</p> <p>4 Q. Can you recall anything that</p> <p>5 Mr. Waterhouse did in his capacity as</p> <p>6 Highland's CFO that did not comport with your</p> <p>7 expectations?</p> <p>8 A. I think we will talk about some of</p> <p>9 those today.</p> <p>10 Q. Okay. Do you have any reason to</p> <p>11 believe that Mr. Waterhouse ever breached his</p> <p>12 duties to Highland during the time that you</p> <p>13 served as president?</p> <p>14 COURT REPORTER: We can't hear you</p> <p>15 speaking.</p> <p>16 Q. We haven't heard any portion of your</p> <p>17 answer, Mr. Dondero.</p> <p>18 MR. MORRIS: I don't know if people</p> <p>19 can – can hear, but I cannot hear</p> <p>20 Mr. Dondero.</p> <p>21 COURT REPORTER: I can't either.</p> <p>22 MR. MORRIS: Yeah, Deborah, can you</p> <p>23 speak, please.</p> <p>24 COURT REPORTER: They're on the same</p> <p>25 speaker.</p>

<p style="text-align: right;">Page 304</p> <p>1 DONDERO - 10/29/21</p> <p>2 VIDEOGRAPHER: Do we want to go off</p> <p>3 the record?</p> <p>4 MR. MORRIS: Yes, please.</p> <p>5 VIDEOGRAPHER: Off the record,</p> <p>6 10:41.</p> <p>7 (Recess taken 10:41 a.m. to 10:47 a.m.)</p> <p>8 VIDEOGRAPHER: Back on the record,</p> <p>9 10:47.</p> <p>10 Q. Okay. Let me just ask the question</p> <p>11 again so the record is clean, Mr. Dondero.</p> <p>12 Do you have any reason to believe as</p> <p>13 you sit here right now that Mr. Waterhouse ever</p> <p>14 breached his duties to Highland during the time</p> <p>15 that you served as president?</p> <p>16 MS. DEITSCH-PEREZ: Asked and</p> <p>17 answered.</p> <p>18 A. Yeah, I think I did ask and answer</p> <p>19 that. Again, not intentionally, not</p> <p>20 maliciously. I am – I guess things we're</p> <p>21 going to talk about today are for periods of</p> <p>22 time after I was president, so...</p> <p>23 Q. Right. That is going to be the next</p> <p>24 question that I ask. But to be clear – I just</p> <p>25 want to have a clear record – during the time</p>	<p style="text-align: right;">Page 305</p> <p>1 DONDERO - 10/29/21</p> <p>2 that you were president, do you have any reason</p> <p>3 to believe that Mr. Waterhouse breached his</p> <p>4 duties to Highland?</p> <p>5 MS. DEITSCH-PEREZ: Asked and</p> <p>6 answered. This is the third time.</p> <p>7 A. No.</p> <p>8 MR. MORRIS: It is actually not.</p> <p>9 Q. But thank you, Mr. Dondero. I</p> <p>10 appreciate that.</p> <p>11 After you ceased to be president of</p> <p>12 Highland, do you have any reason to believe</p> <p>13 that Mr. Waterhouse breached his duties to</p> <p>14 Highland?</p> <p>15 A. Breached his duties to – I don't –</p> <p>16 I don't know if it is – I don't want to – I</p> <p>17 don't want to make a judgment overall. When we</p> <p>18 talk about the notes we can make conclusions</p> <p>19 then.</p> <p>20 Q. All right. But you're not able to</p> <p>21 tell me in response to my question whether you</p> <p>22 believe today that Mr. Waterhouse breached his</p> <p>23 duties to Highland after the time that you</p> <p>24 served as president?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p style="text-align: right;">Page 306</p> <p>1 DONDERO - 10/29/21</p> <p>2 form of the question.</p> <p>3 A. I don't want to comment off the top</p> <p>4 of my head, but I've highlighted that we will</p> <p>5 discuss it around the note issue.</p> <p>6 Q. Okay. You are familiar with an</p> <p>7 entity called Highland Capital Management Fund</p> <p>8 Advisors, L.P.; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. And we're going to refer to that</p> <p>11 entity as HCMFA. Is that okay?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know who owns HCMFA?</p> <p>14 A. I believe it is myself and</p> <p>15 Mark Okada.</p> <p>16 Q. Okay. And do you have an</p> <p>17 understanding as to – as to the percentage of</p> <p>18 each of your interests, ownership interests in</p> <p>19 HCMFA?</p> <p>20 A. No, and I don't know the entities.</p> <p>21 I don't know if I own it directly or through</p> <p>22 Dugaboy. And I do believe Okada tends to use</p> <p>23 his trusts, but I don't know the percentages</p> <p>24 either.</p> <p>25 Q. Do you own a – do you own a</p>	<p style="text-align: right;">Page 307</p> <p>1 DONDERO - 10/29/21</p> <p>2 major- – withdrawn.</p> <p>3 Do you directly or indirectly own a</p> <p>4 majority of the ownership interests in HCMFA?</p> <p>5 A. I believe so.</p> <p>6 Q. Okay. And do you control HCMFA?</p> <p>7 A. Yes.</p> <p>8 Q. And do you know when HCMFA was</p> <p>9 created?</p> <p>10 A. No, I do not.</p> <p>11 Q. Do you know if it was before or</p> <p>12 after 2010?</p> <p>13 A. I don't know.</p> <p>14 Q. Have you controlled HCMFA since the</p> <p>15 time it was created?</p> <p>16 A. I believe so, but I don't know for</p> <p>17 sure.</p> <p>18 Q. Can you think of any period of time</p> <p>19 when you didn't control HCMFA?</p> <p>20 A. I don't know. I don't remember the</p> <p>21 ownership structure prior and I don't remember</p> <p>22 when it started, so I don't know.</p> <p>23 Q. Okay. I'm asking about control and</p> <p>24 not ownership.</p> <p>25 Can you think of any period of time</p>

<p>Page 308</p> <p>1 DONDERO - 10/29/21</p> <p>2 when you did not control HCMFA?</p> <p>3 A. I don't know.</p> <p>4 Q. Okay. Can you tell me what the</p> <p>5 nature of HCMFA's business is?</p> <p>6 A. It largely housed our mutual funds.</p> <p>7 Q. What does it mean to house mutual</p> <p>8 funds?</p> <p>9 A. It managed – it managed the mutual</p> <p>10 funds from a portfolio asset side and captured</p> <p>11 the management fees as the advisor or sub</p> <p>12 advisor – I can't remember the structure. I</p> <p>13 can't remember if it was the advisor and</p> <p>14 Highland was the sub advisor or vice versa, but</p> <p>15 in general, a good portion, or most of the</p> <p>16 portfolio team that managed the mutual funds</p> <p>17 was employed at HCMFA.</p> <p>18 Q. Do you have a title with HCMFA</p> <p>19 today?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know who the president of</p> <p>22 HCMFA is?</p> <p>23 A. I would believe – I would – I</p> <p>24 would think I am, but I don't know.</p> <p>25 Q. Do you know of any title that you</p>	<p>Page 309</p> <p>1 DONDERO - 10/29/21</p> <p>2 have at HCMFA today?</p> <p>3 A. I know I'm the portfolio manager on</p> <p>4 a bunch of the funds, one of usually two or</p> <p>5 three portfolio managers, and I believe I'm the</p> <p>6 president, but I don't know beyond that.</p> <p>7 Q. Okay. Did Frank Waterhouse serve as</p> <p>8 treasurer of HCMFA at any point in time?</p> <p>9 A. I don't know. I don't know. I</p> <p>10 just – I don't know. I don't remember.</p> <p>11 MR. MORRIS: Can I ask my – my</p> <p>12 colleague to please put up a document that</p> <p>13 was premarked as Exhibit 35 to see if I can</p> <p>14 refresh your recollection.</p> <p>15 MS. DEITSCH-PEREZ: Is that in the</p> <p>16 book that you sent over?</p> <p>17 MR. MORRIS: No. She will post it</p> <p>18 and she will put it in the chat room.</p> <p>19 Q. Are you able to see that,</p> <p>20 Mr. Dondero?</p> <p>21 A. Yes.</p> <p>22 Q. Can you see that this is an</p> <p>23 incumbency certificate?</p> <p>24 A. Yes.</p> <p>25 Q. Do you know what an incumbency</p>
<p>Page 310</p> <p>1 DONDERO - 10/29/21</p> <p>2 certificate is?</p> <p>3 A. I'm reading it here for a second. I</p> <p>4 guess it is an officer statement or signature</p> <p>5 authority, or some combination thereof.</p> <p>6 Q. Is that your signature at the bottom</p> <p>7 of this document?</p> <p>8 A. Yes.</p> <p>9 Q. And do you see that this is an</p> <p>10 incumbency certificate for HCMFA that you</p> <p>11 signed effective as of April 11th, 2019?</p> <p>12 A. Yes.</p> <p>13 Q. Do you see that Frank Waterhouse is</p> <p>14 identified as the treasurer of HCMFA as of that</p> <p>15 date?</p> <p>16 A. Yes.</p> <p>17 Q. Does that refresh your recollection</p> <p>18 that Mr. Waterhouse served as the treasurer of</p> <p>19 HCMFA?</p> <p>20 A. It seems to be an authoritative</p> <p>21 document, but I didn't have a recollection.</p> <p>22 Q. Do you know of anybody else who has</p> <p>23 ever served as the treasurer of HCMFA other</p> <p>24 than Mr. Waterhouse?</p> <p>25 A. I don't recall.</p>	<p>Page 311</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Did you, in your capacity as the</p> <p>3 person who was in control of HCMFA, appoint</p> <p>4 Mr. Waterhouse as the treasurer of that entity?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. It appears to me that that's what</p> <p>8 this incumbency certificate does, but...</p> <p>9 Q. Is it fair to say that you knew for</p> <p>10 at least a few years prior to the petition date</p> <p>11 that Mr. Waterhouse was simultaneously serving</p> <p>12 as Highland's CFO and HCMFA's treasurer?</p> <p>13 A. No. I mean, like I said, I don't</p> <p>14 remember, and a lot of the officers had</p> <p>15 multiple roles and multiple entities. I mean,</p> <p>16 it is not surprising, but I didn't have any</p> <p>17 recollection.</p> <p>18 Q. Are you aware that Mr. Waterhouse</p> <p>19 served in any capacity in the Highland universe</p> <p>20 of companies other than as CFO of Highland</p> <p>21 Capital Management, L.P.?</p> <p>22 A. I would – I would assume he would</p> <p>23 have a position like this in multiple other</p> <p>24 entities, but I don't know which ones or what</p> <p>25 titles he would have off the top of my head.</p>

<p>Page 312</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Is it fair to say, though, that he</p> <p>3 wouldn't have obtained any of those titles</p> <p>4 without your knowledge and approval?</p> <p>5 A. It is – it is fair to say he was –</p> <p>6 he had – the lawyers or whoever worked on</p> <p>7 general corporate structuring, Frank was a</p> <p>8 senior officer in good standing, so they would</p> <p>9 have used him as appropriate in different</p> <p>10 things.</p> <p>11 So to that extent, I guess I approve</p> <p>12 it, but I sign hundreds of things like this.</p> <p>13 Would – you know, would I have been</p> <p>14 specifically aware or remember – remember it</p> <p>15 is a very low likelihood.</p> <p>16 Q. Is there any position that</p> <p>17 Mr. Waterhouse has ever held that you learned</p> <p>18 about and you objected to on the grounds that</p> <p>19 you hadn't approved it?</p> <p>20 A. No, not that I recall.</p> <p>21 Q. Okay. Do you know if Mr. Waterhouse</p> <p>22 held any positions with any of the retail</p> <p>23 funds?</p> <p>24 A. I don't know.</p> <p>25 Q. He may have, you just don't recall;</p>	<p>Page 313</p> <p>1 DONDERO - 10/29/21</p> <p>2 is that right?</p> <p>3 A. That is correct.</p> <p>4 Q. And you can't identify any title</p> <p>5 that Mr. Waterhouse held during the time that</p> <p>6 you served as Highland's president other than</p> <p>7 CFO of Highland. Do I have that right?</p> <p>8 A. No, I don't think that is fair.</p> <p>9 Q. Okay.</p> <p>10 A. I mean – I mean, he was CFO, but he</p> <p>11 was other things before he was CFO. And as we</p> <p>12 were just saying, he's – he's treasurer on</p> <p>13 this incumbency certificate, but I think he</p> <p>14 might have been on other incumbency</p> <p>15 certificates, so I think your – your summary</p> <p>16 was too narrow.</p> <p>17 Q. Okay. Can you identify any position</p> <p>18 that Mr. Waterhouse held at the same time that</p> <p>19 he is CFO of Highland other than treasurer of</p> <p>20 HCMFA as reflected on this document?</p> <p>21 A. I can't recall, but I imagine there</p> <p>22 to be others.</p> <p>23 Q. And to the extent there are others,</p> <p>24 is it fair to say that you knew at the time</p> <p>25 that Mr. Waterhouse was serving in more than</p>
<p>Page 314</p> <p>1 DONDERO - 10/29/21</p> <p>2 one role?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And in his capacity as CFO of</p> <p>5 Highland, did he report directly to you?</p> <p>6 A. Yes.</p> <p>7 Q. In his capacity as treasurer of</p> <p>8 HCMFA, did he report directly to you?</p> <p>9 A. Yeah, it appears that, yes, that is</p> <p>10 how it was structured.</p> <p>11 Q. Can you think of any position that</p> <p>12 Mr. Waterhouse ever held in the Highland family</p> <p>13 of companies where he didn't report directly to</p> <p>14 you?</p> <p>15 A. I can't – I can't think of any.</p> <p>16 Q. Is Mr. Waterhouse the treasurer of</p> <p>17 HCMFA today?</p> <p>18 A. I don't know. I'm not aware of any</p> <p>19 changes, nor did I orchestrate any changes, but</p> <p>20 I don't know for sure.</p> <p>21 Q. Can you identify any position that</p> <p>22 Mr. Waterhouse holds with any former affiliated</p> <p>23 company of Highland today?</p> <p>24 A. Again, I'm not aware of any changes,</p> <p>25 nor did I orchestrate or precipitate any</p>	<p>Page 315</p> <p>1 DONDERO - 10/29/21</p> <p>2 changes. With the formation of Skyview, I</p> <p>3 don't know if there was changes. I'm not</p> <p>4 aware.</p> <p>5 Q. Have you considered firing</p> <p>6 Mr. Waterhouse from any of the positions that</p> <p>7 he holds with any of the companies that were</p> <p>8 formerly affiliated with Highland?</p> <p>9 A. No.</p> <p>10 Q. As the president of HCMFA –</p> <p>11 withdrawn.</p> <p>12 As the person who was in control of</p> <p>13 HCMFA, did you have any responsibility for</p> <p>14 being familiar with HCMFA's debts and</p> <p>15 obligations?</p> <p>16 MS. DEITSCH-PEREZ: Object to the</p> <p>17 form.</p> <p>18 A. I don't know.</p> <p>19 Q. Did you ever do anything in your</p> <p>20 capacity as the person in control of HCMFA to</p> <p>21 familiarize yourself with HCMFA's debts and</p> <p>22 obligations?</p> <p>23 A. Not during – I mean, not prior to</p> <p>24 bankruptcy.</p> <p>25 Q. So before the bankruptcy, you didn't</p>

<p>Page 316</p> <p>1 DONDERO - 10/29/21</p> <p>2 take any steps to familiarize yourself with</p> <p>3 HCMFA's debts and obligations. Do I have that</p> <p>4 right?</p> <p>5 A. Correct, not specifically.</p> <p>6 Q. Okay. Who was responsible for</p> <p>7 knowing and understanding the scope and extent</p> <p>8 of HCMFA's debts and obligations?</p> <p>9 A. That would have fallen on Frank and</p> <p>10 his group.</p> <p>11 Q. Okay. Do you have an understanding</p> <p>12 as to who was authorized to incur obligations</p> <p>13 on behalf of HCMFA?</p> <p>14 A. I mean, beyond – beyond due course,</p> <p>15 I struggle to see why it would be anybody other</p> <p>16 than me, but I don't know.</p> <p>17 Q. Do you know if Mr. Waterhouse was</p> <p>18 authorized as the treasurer of HCMFA to incur</p> <p>19 obligations on its behalf?</p> <p>20 A. He wasn't the senior operating or</p> <p>21 executive positions there. So the answer is</p> <p>22 no, beyond, you know – beyond the normal</p> <p>23 course of operating expenses or whatever, but</p> <p>24 it would – he would never be the person on</p> <p>25 anything of significance.</p>	<p>Page 317</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. How do you define "significance"?</p> <p>3 A. Like waiving fees on a mutual fund,</p> <p>4 purchasing another mutual fund, yeah, things</p> <p>5 like that.</p> <p>6 Q. Was there any document or policy</p> <p>7 that you are aware of that specifically</p> <p>8 identifies the scope of Mr. Waterhouse's</p> <p>9 authority as the treasurer of HCMFA?</p> <p>10 A. No.</p> <p>11 Q. Is there anything that you are aware</p> <p>12 of that specifically limits Mr. Waterhouse's</p> <p>13 authority other than what might be in your</p> <p>14 head?</p> <p>15 A. No, I would – I would say what is</p> <p>16 in my head is – would be typical industry</p> <p>17 practice. You wouldn't – you wouldn't have</p> <p>18 executive vice presidents or ownership defined</p> <p>19 if you were going to delegate everything to an</p> <p>20 employee three levels down, you know.</p> <p>21 MS. DEITSCH-PEREZ: Okay. John,</p> <p>22 I've had a request from Davor to take a</p> <p>23 quick restroom break, so –</p> <p>24 MR. MORRIS: You know, I really –</p> <p>25 Davor, I'm happy to accommodate, but at</p>
<p>Page 318</p> <p>1 DONDERO - 10/29/21</p> <p>2 some point we have got to be able to get</p> <p>3 more than 10 minutes of testimony in a row.</p> <p>4 So let's take a short break.</p> <p>5 MS. DEITSCH-PEREZ: Thank you.</p> <p>6 VIDEOGRAPHER: Going off the record.</p> <p>7 The time is 11:08.</p> <p>8 (Recess taken 11:08 a.m. to 11:16 a.m.)</p> <p>9 VIDEOGRAPHER: Back on the record,</p> <p>10 11:16.</p> <p>11 Q. Mr. Dondero, did you communicate</p> <p>12 with anybody on the break about the substance</p> <p>13 of your testimony?</p> <p>14 A. No.</p> <p>15 Q. As treasurer of HCMFA, did</p> <p>16 Mr. Waterhouse's responsibilities include being</p> <p>17 familiar with HCMFA's debts and obligations?</p> <p>18 A. Yes.</p> <p>19 Q. Do you have any reason to believe as</p> <p>20 you sit here today that Mr. Waterhouse failed</p> <p>21 to fulfill his responsibilities as treasurer of</p> <p>22 HCMFA and familiarize himself with their debts</p> <p>23 and responsibilities?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>	<p>Page 319</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I don't know.</p> <p>3 Q. I appreciate that you don't know,</p> <p>4 but do you have any reason as you sit here</p> <p>5 today to believe that he failed to fulfill that</p> <p>6 particular responsibility?</p> <p>7 A. I don't know.</p> <p>8 Q. Okay. Are you an authorized</p> <p>9 signatory on HCMFA's bank accounts?</p> <p>10 A. I don't know.</p> <p>11 Q. Do you know who the authorized</p> <p>12 signatories are on HCMFA's bank accounts?</p> <p>13 A. No.</p> <p>14 Q. Do you know whether anybody now</p> <p>15 employed or previously employed by Highland was</p> <p>16 an authorized signatory with respect to any of</p> <p>17 HCMFA's bank accounts?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know whether Mr. Waterhouse</p> <p>20 was an authorized signatory on any of HCMFA's</p> <p>21 bank accounts?</p> <p>22 A. I don't know how he had – had it</p> <p>23 set up. There would have been, I imagine,</p> <p>24 checks and balances. We run, as far as I know,</p> <p>25 a compliant accounting group, you know, with</p>



<p>Page 320</p> <p>1 DONDERO - 10/29/21</p> <p>2 the right audit controls, et cetera. So I</p> <p>3 would imagine there would have been somebody</p> <p>4 preparing it and multiple signatures or</p> <p>5 multiple sign-offs on wires, but I have no</p> <p>6 awareness of this. I mean, I would believe</p> <p>7 that it was done compliantly and correctly, but</p> <p>8 I don't have any specific awareness.</p> <p>9 Q. Okay. Do you know Lauren Thedford?</p> <p>10 A. Yes.</p> <p>11 Q. And was Ms. Thedford an employee of</p> <p>12 Highland at one time?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall what position she held</p> <p>15 at any particular point in time?</p> <p>16 A. I believe she held several different</p> <p>17 positions over the years, but I remember most</p> <p>18 as a corporate attorney working on document –</p> <p>19 documents when we – we do new funds or amend</p> <p>20 old funds.</p> <p>21 Q. Okay. Do you recall whether she</p> <p>22 served as an officer of HCMFA?</p> <p>23 A. Wasn't her name on the incumbency</p> <p>24 certificate we had up earlier?</p> <p>25 Q. It was. We can put it back up if</p>	<p>Page 321</p> <p>1 DONDERO - 10/29/21</p> <p>2 you want to look at that.</p> <p>3 A. No, but I think that is – that is</p> <p>4 the answer, but that is my only awareness.</p> <p>5 Q. Okay. Do you have – do you have –</p> <p>6 do you know whether she was ever appointed to</p> <p>7 any position within the Highland corporate</p> <p>8 family other than as an attorney with Highland</p> <p>9 and as the secretary of HCMFA?</p> <p>10 A. I don't know.</p> <p>11 Q. Other than Ms. Waterhouse –</p> <p>12 withdrawn.</p> <p>13 Other than Mr. Waterhouse and</p> <p>14 Ms. Thedford, can you identify any current or</p> <p>15 former employee of Highland that ever served as</p> <p>16 an officer of HCMFA?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. Can you identify any current</p> <p>19 or former employee of Highland who was</p> <p>20 simultaneously also an employee of HCMFA?</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form.</p> <p>23 A. You mean somebody who was a dual</p> <p>24 employee?</p> <p>25 Q. Yeah, who was actually – yeah, to</p>
<p>Page 322</p> <p>1 DONDERO - 10/29/21</p> <p>2 be clear, who was actually employed by both,</p> <p>3 who received, you know, income from both.</p> <p>4 A. I don't know regarding income, but</p> <p>5 some of that historic portfolio managers like</p> <p>6 Michael Gregory or Jonathan Lamensdorf, they</p> <p>7 did work for HCMFA primarily, but they also did</p> <p>8 other things for Highland. I don't know how</p> <p>9 their compensation or their bonuses were split.</p> <p>10 I just – I wouldn't have awareness of that.</p> <p>11 Q. Let's move on to NexPoint. You're</p> <p>12 familiar with an entity called NexPoint</p> <p>13 Advisors, L.P.; correct?</p> <p>14 A. Yes.</p> <p>15 Q. We will refer to that as NexPoint,</p> <p>16 okay?</p> <p>17 A. Sure.</p> <p>18 Q. Do you know who owns NexPoint?</p> <p>19 A. Directly or indirectly, I believe I</p> <p>20 do.</p> <p>21 Q. Okay. And do you control NexPoint?</p> <p>22 A. Yes.</p> <p>23 Q. And do you know when NexPoint was</p> <p>24 created?</p> <p>25 A. More than five years ago, but I</p>	<p>Page 323</p> <p>1 DONDERO - 10/29/21</p> <p>2 don't remember when.</p> <p>3 Q. Can you tell me generally the nature</p> <p>4 of NexPoint's business?</p> <p>5 A. It is generally real estate related.</p> <p>6 Q. Have you controlled NexPoint</p> <p>7 throughout its corporate existence, to the best</p> <p>8 of your knowledge?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have a title with NexPoint</p> <p>11 today?</p> <p>12 A. I believe I'm president, but I don't</p> <p>13 know for sure.</p> <p>14 Q. Did you appoint Mr. Waterhouse to</p> <p>15 serve as treasurer of NexPoint?</p> <p>16 A. I don't know.</p> <p>17 MR. MORRIS: Please put up Exhibit</p> <p>18 37.</p> <p>19 Q. This is another incumbency</p> <p>20 certificate, sir?</p> <p>21 A. Yes.</p> <p>22 Q. And do you see, is that your</p> <p>23 signature at the bottom?</p> <p>24 A. Looks like it, yes.</p> <p>25 Q. And does that refresh your</p>

<p>Page 324</p> <p>1 DONDERO - 10/29/21</p> <p>2 recollection that you personally identified</p> <p>3 Mr. Waterhouse as the treasurer of NexPoint</p> <p>4 Advisors, L.P. effective as of April 11th,</p> <p>5 2019?</p> <p>6 A. No, I mean, not – no.</p> <p>7 Q. Do you have any reason to doubt that</p> <p>8 Mr. Waterhouse served as the treasurer of</p> <p>9 NexPoint Advisors prior to the petition date?</p> <p>10 A. No, I don't have a reason to</p> <p>11 disagree with it. I just didn't have an</p> <p>12 awareness. And when you asked me earlier, the</p> <p>13 thing that was running through my mind is that</p> <p>14 it could have been, you know, Brian Mitts who</p> <p>15 has a strong accounting background at NexPoint.</p> <p>16 I just wasn't – I didn't know, based on</p> <p>17 recollection, who was treasurer.</p> <p>18 Q. Okay. Were you aware that – but</p> <p>19 you were aware, were you not, that</p> <p>20 Mr. Waterhouse wore multiple hats?</p> <p>21 MS. DEITSCH-PEREZ: Objection to</p> <p>22 form.</p> <p>23 Q. Withdrawn.</p> <p>24 You were aware, were you not, sir,</p> <p>25 that during the time that you served as</p>	<p>Page 325</p> <p>1 DONDERO - 10/29/21</p> <p>2 president of Highland, that Mr. Waterhouse</p> <p>3 served in capacities with respect to affiliated</p> <p>4 companies?</p> <p>5 A. I was aware that multiple senior</p> <p>6 executives had multiple titles at multiple</p> <p>7 different entities, but I didn't have specific</p> <p>8 awareness whatsoever on entities that Frank was</p> <p>9 or was not involved in.</p> <p>10 Q. Okay. But to the extent that he</p> <p>11 held a title with one of the affiliated</p> <p>12 companies, those affiliated companies would</p> <p>13 have been managed or controlled by you;</p> <p>14 correct?</p> <p>15 A. Generally.</p> <p>16 Q. You can't think of any title that he</p> <p>17 held with an affiliated company that wasn't</p> <p>18 managed by you, can you?</p> <p>19 A. No, not off the top of my head.</p> <p>20 Q. And you knew and intended prior to</p> <p>21 the petition date to have Mr. Waterhouse serve</p> <p>22 in multiple roles; is that fair?</p> <p>23 A. Yes.</p> <p>24 Q. Have you ever considered firing</p> <p>25 Mr. Waterhouse from his position as treasurer</p>
<p>Page 326</p> <p>1 DONDERO - 10/29/21</p> <p>2 of NexPoint Advisors?</p> <p>3 A. No.</p> <p>4 Q. Okay. As the president of NexPoint</p> <p>5 Advisors, do you believe that you had a</p> <p>6 responsibility to familiarize yourself with</p> <p>7 NexPoint's debts and obligations?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. Just generally.</p> <p>11 Q. Okay. Did you do anything to</p> <p>12 generally inform yourself of NexPoint's debts</p> <p>13 and obligations?</p> <p>14 A. Not – not specifically that I can</p> <p>15 recall.</p> <p>16 Q. Can you recall doing anything to</p> <p>17 familiarize yourself with NexPoint's debts and</p> <p>18 obligations at any time?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. Not that I recall.</p> <p>22 Q. Did you ever look at NexPoint's</p> <p>23 balance sheet?</p> <p>24 A. Not – not that I – not that I</p> <p>25 recall.</p>	<p>Page 327</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Do you know whether NexPoint's</p> <p>3 balance sheet reflected obligations that it</p> <p>4 carried as liabilities that were due and owing</p> <p>5 to Highland?</p> <p>6 A. I was aware generally of the notes,</p> <p>7 but I didn't study the NexPoint balance sheet.</p> <p>8 Q. Do you believe that Mr. Waterhouse</p> <p>9 had any responsibility as NexPoint's treasurer</p> <p>10 to familiarize himself with NexPoint's debts</p> <p>11 and obligations?</p> <p>12 A. Yeah. I mean, the role is different</p> <p>13 and the burden is different, and Frank and his</p> <p>14 team orchestrated all the audits and compliance</p> <p>15 statements and regulatory stuff for all of the</p> <p>16 funds managed by NexPoint.</p> <p>17 Q. Well, you personally were</p> <p>18 responsible for Highland's audited financial</p> <p>19 statements, weren't you?</p> <p>20 MS. DEITSCH-PEREZ: Objection, form.</p> <p>21 A. No. I mean, "responsible" is not</p> <p>22 the right word. I mean, we – I have to – as</p> <p>23 the senior most executive, I have to – to</p> <p>24 sign – sign statements regarding completeness</p> <p>25 and no known frauds and those kinds of things,</p>

<p style="text-align: right;">Page 328</p> <p>1 DONDERO - 10/29/21</p> <p>2 but I am in no way involved in the preparation.</p> <p>3 Q. We will talk about that in a bit.</p> <p>4 Do you have any reason to believe</p> <p>5 today that Mr. Waterhouse failed to fulfill his</p> <p>6 responsibilities as treasurer of NexPoint to</p> <p>7 familiarize himself with NexPoint's debts and</p> <p>8 obligations?</p> <p>9 A. I don't know.</p> <p>10 Q. You can't identify any particular</p> <p>11 reason that you might have for concluding that</p> <p>12 Mr. Waterhouse failed to fulfill his duties as</p> <p>13 treasurer of NexPoint to familiarize himself</p> <p>14 with NexPoint's duties and respons – duties</p> <p>15 and obligations; correct?</p> <p>16 A. Yes, I don't know.</p> <p>17 Q. Okay. Do you know who the</p> <p>18 authorized signatories are on NexPoint's bank</p> <p>19 accounts?</p> <p>20 A. No.</p> <p>21 Q. Do you know if you're an authorized</p> <p>22 signatory on NexPoint's bank accounts?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you know if Mr. Waterhouse is an</p> <p>25 authorized signatory on NexPoint's bank</p>	<p style="text-align: right;">Page 329</p> <p>1 DONDERO - 10/29/21</p> <p>2 accounts?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know whether there is any</p> <p>5 current or former employee of Highland who did</p> <p>6 not hold an officer position at NexPoint who</p> <p>7 would have been an authorized signatory on</p> <p>8 NexPoint's bank accounts?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I don't know.</p> <p>12 Q. Can you identify any current or</p> <p>13 former employee of Highland who served as an</p> <p>14 officer of NexPoint at any time other than</p> <p>15 Ms. Thedford and Mr. Waterhouse?</p> <p>16 A. I don't know.</p> <p>17 Q. Okay. Let's go to HCMS. Are you</p> <p>18 familiar with an entity called Highland Capital</p> <p>19 Management Services, Inc.?</p> <p>20 A. Generally, yes.</p> <p>21 Q. And can we refer to that as HCMS?</p> <p>22 A. Yes.</p> <p>23 Q. Do you have a direct or indirect</p> <p>24 ownership interest in HCMS?</p> <p>25 A. I believe so.</p>
<p style="text-align: right;">Page 330</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And do you own a majority of the</p> <p>3 interest directly or indirectly in HCMS?</p> <p>4 A. I believe so.</p> <p>5 Q. Do you control HCMS?</p> <p>6 A. I believe so.</p> <p>7 Q. Have you – has there ever been a</p> <p>8 period of time in HCMS's corporate existence</p> <p>9 where you did not control that entity?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. Do you recall when HCMS was created?</p> <p>12 A. More than five years ago, but I</p> <p>13 don't remember when.</p> <p>14 Q. Do you have an understanding of the</p> <p>15 nature of HCMS's business?</p> <p>16 A. It manages some assets, and it was</p> <p>17 trying to create track records that then could</p> <p>18 be marketed.</p> <p>19 Q. What does it mean to create a track</p> <p>20 record that could be marketed?</p> <p>21 A. You execute investments and</p> <p>22 investment strategy that you can refine and</p> <p>23 articulate and show good results to potential</p> <p>24 third-party investors as – as evidence that</p> <p>25 you can do it. And then that track record is</p>	<p style="text-align: right;">Page 331</p> <p>1 DONDERO - 10/29/21</p> <p>2 something the investors are willing to take a</p> <p>3 chance on and then give you separate account</p> <p>4 money along those lines.</p> <p>5 Q. Do you have a title with HCMS today?</p> <p>6 A. I don't know.</p> <p>7 Q. But you do control the entity; is</p> <p>8 that fair?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form, asked and answered.</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Do you know whether</p> <p>13 Mr. Waterhouse has ever served as an officer of</p> <p>14 HCMS?</p> <p>15 A. I have no idea.</p> <p>16 Q. Can you identify any person in the</p> <p>17 world who has ever served as an officer of</p> <p>18 HCMS?</p> <p>19 A. I don't know what the incumbency</p> <p>20 certificate would look like for services, but</p> <p>21 I'm willing to be refreshed.</p> <p>22 Q. Do you know if anybody ever served</p> <p>23 as the chief – withdrawn.</p> <p>24 Did HCMF ever have anybody serve in</p> <p>25 the capacity of chief financial officer?</p>

<p style="text-align: right;">Page 332</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. The subject of that question was</p> <p>3 HCMF. Is that what you meant to say, or did</p> <p>4 you mean Services?</p> <p>5 Q. No, I apologize. Thank you for the</p> <p>6 clarification. I did mean HCMS, so let me try</p> <p>7 again.</p> <p>8 Has anybody ever served in the</p> <p>9 capacity of chief financial officer of HCMS?</p> <p>10 A. HCMF.</p> <p>11 MS. DEITSCH-PEREZ: S.</p> <p>12 A. Not –</p> <p>13 Q. S.</p> <p>14 A. Not of Services – not that –</p> <p>15 again, I don't know. I'm willing to be</p> <p>16 refreshed, but I – I have no awareness.</p> <p>17 Q. Okay. As president – as the person</p> <p>18 in control of HCMS, do you believe you had any</p> <p>19 responsibility to familiarize yourself with</p> <p>20 that entity's debts and obligations?</p> <p>21 A. Again, just generally, to the extent</p> <p>22 that they were material or an issue or</p> <p>23 whatever, but no more than generally.</p> <p>24 Q. Can you describe anything you ever</p> <p>25 did to generally familiarize yourself with</p>	<p style="text-align: right;">Page 333</p> <p>1 DONDERO - 10/29/21</p> <p>2 HCMS's debts and obligations?</p> <p>3 A. I guess my answer, which would apply</p> <p>4 to all of these entities, is awareness to know</p> <p>5 that the amounts were de minimis relative to</p> <p>6 the value of the entity, and the debt service</p> <p>7 costs or issues were very de minimis relative</p> <p>8 to the entities, but beyond that, I didn't</p> <p>9 study them.</p> <p>10 Q. Well, did – did HCMFA have</p> <p>11 obligations to HCMLP that you would</p> <p>12 characterize as di minimis from HCMFA's</p> <p>13 perspective?</p> <p>14 A. Yeah, or just – it never had</p> <p>15 obligations that were more than de minimis.</p> <p>16 Q. As – as the person in control of</p> <p>17 HCMFA, did you ever have any concern that HCMFA</p> <p>18 would not be able to satisfy its obligations to</p> <p>19 HCMLP if – if a demand was made?</p> <p>20 A. No.</p> <p>21 Q. Okay. Was anybody charged with the</p> <p>22 responsibility of familiarizing themselves with</p> <p>23 HCMS's debts and obligations?</p> <p>24 A. Again, to differentiate or separate</p> <p>25 myself from the treasury function or from what</p>
<p style="text-align: right;">Page 334</p> <p>1 DONDERO - 10/29/21</p> <p>2 Frank and his group were doing.</p> <p>3 From my perspective, I had to be</p> <p>4 aware about it – aware of any obligations or</p> <p>5 notes or debt service costs, et cetera, but to</p> <p>6 the extent that I was aware and knew that it</p> <p>7 was de minimis, I didn't spend any time</p> <p>8 focusing on it, studying it, calculating it</p> <p>9 exactly, or anything like that.</p> <p>10 Having said that, we are highly</p> <p>11 compliant. We do – we did audits every year</p> <p>12 with reputable accounting firms that were</p> <p>13 complete and in depth. And any obligations</p> <p>14 and/or assets, de minimis or not, in my view,</p> <p>15 would nonetheless have to be reflected or</p> <p>16 captured accurately and prepared for the</p> <p>17 auditors in supplying, you know, detail or</p> <p>18 source documents or whatever, whatever they do</p> <p>19 in accounting as part of the audit function.</p> <p>20 And all that would have done – been</p> <p>21 done exactly and expertly, as far as I know,</p> <p>22 and it would have been done by Frank and his</p> <p>23 group.</p> <p>24 Q. Okay.</p> <p>25 A. That is – I'm trying to give a</p>	<p style="text-align: right;">Page 335</p> <p>1 DONDERO - 10/29/21</p> <p>2 complete answer regarding a myriad of ways</p> <p>3 you've asked me kind of the same structural</p> <p>4 questions.</p> <p>5 Q. I am, and just to be clear, I'm</p> <p>6 asking kind of the same structural questions</p> <p>7 with respect to each of the entities at issue.</p> <p>8 I think you picked up on that. I hope you</p> <p>9 don't think I'm being repetitive.</p> <p>10 You mentioned Frank and his group in</p> <p>11 the context of HCMS. Did I hear that</p> <p>12 correctly?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. HCMS did not have a shared</p> <p>15 services agreement with Highland; correct?</p> <p>16 MS. DEITSCH-PEREZ: You mean a</p> <p>17 written shared services agreement, John?</p> <p>18 Q. Do you understand the question, sir?</p> <p>19 A. Yeah. My answer would be the</p> <p>20 advisors like NexPoint and HFAM that had to</p> <p>21 have by law and regulatory statute have to have</p> <p>22 formal sub advisors and shared services</p> <p>23 agreements had formal shared services</p> <p>24 agreement.</p> <p>25 Entities that didn't need to have</p>

<p>Page 336</p> <p>1 DONDERO - 10/29/21</p> <p>2 formal written shared services agreements were</p> <p>3 often serviced similarly or – or exactly the</p> <p>4 same as those entities, but without a written</p> <p>5 agreement, but with a verbal shared services</p> <p>6 agreement providing, again, all the same</p> <p>7 similar services.</p> <p>8 And the entities that didn't have a</p> <p>9 written shared services agreement weren't</p> <p>10 getting shared services or support from any</p> <p>11 other entities other than Highland doing the</p> <p>12 same thing for them that it did for the mutual</p> <p>13 funds.</p> <p>14 Q. Okay. Can you tell me who entered</p> <p>15 into an oral shared services agreement between</p> <p>16 Highland and HCMS?</p> <p>17 A. Boy, I can imagine way back in the</p> <p>18 day it would have been myself and Frank, but he</p> <p>19 and his group understood and knew that they</p> <p>20 were doing it for all the new entities that</p> <p>21 came along, and I can't imagine it was even</p> <p>22 talked about much over the years.</p> <p>23 Q. Did – did HCMFA and NexPoint pay</p> <p>24 money to Highland under the shared services</p> <p>25 agreement until let's just say late 2020?</p>	<p>Page 337</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yeah, yes, and early into '21, I</p> <p>3 believe also.</p> <p>4 Q. Okay. As – as part of the oral</p> <p>5 agreement that you referenced, was there – was</p> <p>6 there ever an agreement that HCMS would pay any</p> <p>7 money to Highland in exchange for the services</p> <p>8 that Highland provided to it?</p> <p>9 A. I do not believe there was a</p> <p>10 financial remuneration aspect of it.</p> <p>11 Q. Okay. And do you recall during your</p> <p>12 time as president of Highland whether Highland</p> <p>13 ever received payment from HCMS for services</p> <p>14 rendered?</p> <p>15 MS. DEITSCH-PEREZ: And are we just</p> <p>16 talking about money?</p> <p>17 MR. MORRIS: Correct.</p> <p>18 A. Yeah, I don't – I don't recall</p> <p>19 moneys being – well, you know what, let me –</p> <p>20 let me clarify that a little bit.</p> <p>21 If there were any direct costs that</p> <p>22 Highland would have incurred like getting the</p> <p>23 audits done, you know, like if Price Waterhouse</p> <p>24 said, okay, give us the details on, you know,</p> <p>25 all the different entities that roll up into</p>
<p>Page 338</p> <p>1 DONDERO - 10/29/21</p> <p>2 the Highland entity.</p> <p>3 And then – and they prepared</p> <p>4 statements or did work for services, Frank and</p> <p>5 his group would have passed through those costs</p> <p>6 and expected services and/or Dugaboy or any of</p> <p>7 the other entities to pay for direct</p> <p>8 out-of-pocket costs. But it wouldn't have paid</p> <p>9 a supplemental fee or profit or anything to</p> <p>10 Highland.</p> <p>11 Q. Okay. To the best of your</p> <p>12 recollection, during the time that you were</p> <p>13 president of Highland, did Highland ever</p> <p>14 receive anything of value from HCMS on account</p> <p>15 of services other than the reimbursement of</p> <p>16 out-of-pocket expenses?</p> <p>17 A. Yeah, I'm going to go back to my</p> <p>18 comment in terms of building track record. And</p> <p>19 I would use – yeah, we had done it several</p> <p>20 times in the past and it had worked</p> <p>21 effectively. And that is – you know, yeah, I</p> <p>22 mean, the – the track record in CLO paper was</p> <p>23 what was used to track – (inaudible) – as an</p> <p>24 investor.</p> <p>25 And so, you know, to the extent that</p>	<p>Page 339</p> <p>1 DONDERO - 10/29/21</p> <p>2 the DAF wasn't paying a fee, along the way, to</p> <p>3 Highland for shared services, Highland got the</p> <p>4 benefit of the track record that was being</p> <p>5 built at the DAF to then market to third</p> <p>6 parties, which then created a revenue stream</p> <p>7 for Highland down the road.</p> <p>8 And I would say that was the same</p> <p>9 intent on Services.</p> <p>10 Q. Is there anything – anything else</p> <p>11 of value that you believe HCMS provided to</p> <p>12 Highland in exchange for the services that</p> <p>13 Highland rendered?</p> <p>14 A. That would be primarily it. I would</p> <p>15 say there is probably times where Services</p> <p>16 provided liquidity for Highland or helped on</p> <p>17 investments that Highland was involved in, but</p> <p>18 I would have to refresh myself on exactly what.</p> <p>19 Q. Is it fair to say that HCMF – HCMS</p> <p>20 never provided a revenue stream to Highland</p> <p>21 similar to the revenue stream that was provided</p> <p>22 by HCMFA and NexPoint under the shared services</p> <p>23 agreements?</p> <p>24 A. That is correct.</p> <p>25 Q. Okay. Did anybody at HCMF –</p>



<p>Page 340</p> <p>1 DONDERO - 10/29/21</p> <p>2 withdrawn.</p> <p>3 Did anybody at HCMS ever have the</p> <p>4 responsibility for familiarizing themselves</p> <p>5 with HCMS' debts and obligations?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. Frank and his team, as part of</p> <p>9 preparing the audited financials for all the</p> <p>10 entities, would have definitively been aware of</p> <p>11 all of them. Who else on the services</p> <p>12 incumbency certificate or – would be aware or</p> <p>13 have knowledge, I don't know.</p> <p>14 Q. Okay. And when you refer to "Frank</p> <p>15 and his team," are any of them acting as an</p> <p>16 officer or employee of HCMS in what you are</p> <p>17 thinking about?</p> <p>18 A. I – I don't know. I don't know.</p> <p>19 Did – we haven't – have we looked at the</p> <p>20 incumbency certificate for services?</p> <p>21 Q. No.</p> <p>22 A. I don't know. I don't know off the</p> <p>23 top of my head.</p> <p>24 Q. Okay. Let's just finish this up.</p> <p>25 Can you identify any current or</p>	<p>Page 341</p> <p>1 DONDERO - 10/29/21</p> <p>2 former Highland employee who served as an</p> <p>3 officer of HCMS at any time?</p> <p>4 A. No, I would need to be refreshed.</p> <p>5 Q. Okay. Can you identify –</p> <p>6 withdrawn. Let's go to the last one, HCRE.</p> <p>7 Are you familiar with an entity</p> <p>8 called HCRE Partners, LLC?</p> <p>9 A. Yes.</p> <p>10 Q. And is that entity now known as</p> <p>11 NexPoint Real Estate Partners, LLC?</p> <p>12 A. You know what, I do believe it had a</p> <p>13 name change. I don't know if that is the name</p> <p>14 change, but that would make sense.</p> <p>15 Q. Okay. Can we just refer to that</p> <p>16 entity as HCRE?</p> <p>17 A. That is fine.</p> <p>18 Q. Okay. Do you have any direct or</p> <p>19 indirect ownership interest in HCRE?</p> <p>20 A. Yes.</p> <p>21 Q. And is it a majority interest to the</p> <p>22 best of your knowledge?</p> <p>23 A. Yes.</p> <p>24 Q. Do you control HCRE?</p> <p>25 A. Yes.</p>
<p>Page 342</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Have you controlled HCRE throughout</p> <p>3 its corporate existence?</p> <p>4 A. Yes.</p> <p>5 Q. Can you tell me what the nature of</p> <p>6 HCRE's business is?</p> <p>7 A. It makes real estate investments.</p> <p>8 Q. Do you have a title with that</p> <p>9 entity?</p> <p>10 A. I don't know, but I'm willing to be</p> <p>11 refreshed. And I assume its incumbency</p> <p>12 certificate looks similar to the ones that you</p> <p>13 have put up.</p> <p>14 Q. Can you identify for me today</p> <p>15 anybody who has ever served as an officer of</p> <p>16 HCRE at any time?</p> <p>17 A. I would rather be refreshed. I</p> <p>18 would imagine myself and Matt McGraner are two</p> <p>19 of those people, but I don't know for sure.</p> <p>20 Q. Okay. Without the incumbency</p> <p>21 certificates or other documentation, you are</p> <p>22 not able to give me any names other than Mr. –</p> <p>23 other than you and Mr. McGraner; is that fair?</p> <p>24 A. That's correct.</p> <p>25 Q. Okay. Do you know whether anybody</p>	<p>Page 343</p> <p>1 DONDERO - 10/29/21</p> <p>2 has ever been given the responsibility –</p> <p>3 withdrawn.</p> <p>4 Do you know whether anybody has ever</p> <p>5 had the responsibility for familiarizing</p> <p>6 themselves with the debts and obligations of</p> <p>7 HCRE?</p> <p>8 A. It would be the same answer as given</p> <p>9 on the other entities. It would be the</p> <p>10 treasurer, which is probably Frank. And if not</p> <p>11 the treasurer it would be Frank in his role and</p> <p>12 his team of putting together the complete and</p> <p>13 accurate financials of HCRE.</p> <p>14 Q. Other than putting together the</p> <p>15 complete and accurate financials of HCRE, did</p> <p>16 Frank and his team have any other</p> <p>17 responsibility with respect to understanding</p> <p>18 the debts and obligations of HCRE?</p> <p>19 MS. DEITSCH-PEREZ: Objection, form.</p> <p>20 A. Again, just the general overlay</p> <p>21 being that they were de minimis and – de</p> <p>22 minimus, and the service obligations were de</p> <p>23 minimus relative to the value or operating</p> <p>24 income of the enterprise.</p> <p>25 In other words, had they been more</p>

<p>Page 344</p> <p>1 DONDERO - 10/29/21</p> <p>2 material or material, they would have had more</p> <p>3 focus. But they didn't deserve more focus.</p> <p>4 Q. And so is it fair to say that you</p> <p>5 didn't do anything to familiarize yourself with</p> <p>6 HCRE's debts and obligations?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. Not on a regular detailed basis, you</p> <p>10 know, just a general awareness.</p> <p>11 Q. Did you ever take any steps to</p> <p>12 review the affiliate loans and obligations that</p> <p>13 were due between and among Highland and its</p> <p>14 affiliated companies?</p> <p>15 A. Again, just generally.</p> <p>16 Q. What did you do?</p> <p>17 A. Like I said, I had a general</p> <p>18 awareness of them.</p> <p>19 Q. And did you receive from time to</p> <p>20 time lists or information that specifically</p> <p>21 described the amounts that were due and owing</p> <p>22 from the affiliates to Highland?</p> <p>23 A. Yeah, from time to time the amounts,</p> <p>24 yes.</p> <p>25 Q. Let's just quickly go to the</p>	<p>Page 345</p> <p>1 DONDERO - 10/29/21</p> <p>2 30(b)(6) notices if we can.</p> <p>3 MR. MORRIS: Can we put up a</p> <p>4 document that has been marked as</p> <p>5 Exhibit 47.</p> <p>6 (Exhibit 47 marked.)</p> <p>7 Q. Do you understand, Mr. Dondero, that</p> <p>8 you are here today in your individual capacity</p> <p>9 and in your capacity as what is called a</p> <p>10 30(b)(6) witness for certain entities?</p> <p>11 A. Yes, a little bit to my chagrin.</p> <p>12 And I don't think you will see me again as a</p> <p>13 30(b)(6) witness, but yes.</p> <p>14 Q. All right. Well, it wasn't my</p> <p>15 choice, so let's just go through it quickly.</p> <p>16 Have you seen this document before,</p> <p>17 sir?</p> <p>18 A. Yes.</p> <p>19 Q. And do you understand that you are</p> <p>20 here today in your capacity as NexPoint's</p> <p>21 corporate representative?</p> <p>22 A. Yes.</p> <p>23 Q. And do you understand that your</p> <p>24 answers today in your capacity as NexPoint's</p> <p>25 corporate representative will be binding on</p>
<p>Page 346</p> <p>1 DONDERO - 10/29/21</p> <p>2 NexPoint?</p> <p>3 MS. DEITSCH-PEREZ: As qualified by</p> <p>4 the objections that we made.</p> <p>5 MR. MORRIS: Sure.</p> <p>6 A. I will do the best I can.</p> <p>7 Q. Thank you so much.</p> <p>8 MR. MORRIS: Can we go to the next</p> <p>9 page, please. The last page. The topics.</p> <p>10 Q. Okay. Have you seen these topics</p> <p>11 before, sir?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you see that we asked for</p> <p>14 somebody to testify as to NexPoint's answer?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Are you aware that</p> <p>17 NexPoint – are you aware that NexPoint filed</p> <p>18 an answer to Highland's amended complaint?</p> <p>19 A. Yes.</p> <p>20 Q. And did you review NexPoint's answer</p> <p>21 at any time before today's deposition?</p> <p>22 A. It was in the binder, I believe,</p> <p>23 that you guys sent over.</p> <p>24 Q. I think that's right. Are you</p> <p>25 prepared to answer questions today about</p>	<p>Page 347</p> <p>1 DONDERO - 10/29/21</p> <p>2 NexPoint's answer?</p> <p>3 MS. DEITSCH-PEREZ: Again, subject</p> <p>4 to our objection, but...</p> <p>5 A. Yeah, to the best I can.</p> <p>6 Q. Okay. The next topic concerns</p> <p>7 affirmative defenses.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you have an understanding of what</p> <p>11 an affirmative defense is?</p> <p>12 A. Yes.</p> <p>13 Q. What is your understanding of an</p> <p>14 affirmative defense?</p> <p>15 A. I think it is those – phrase that</p> <p>16 you see in most of our answers, the</p> <p>17 justification, estoppel, waiver, and then –</p> <p>18 and then there is some specific answers beyond</p> <p>19 that, I guess.</p> <p>20 Q. Okay. Are you prepared –</p> <p>21 MS. DEITSCH-PEREZ: John, I take it</p> <p>22 you will show him. He doesn't have to have</p> <p>23 them memorized.</p> <p>24 MR. MORRIS: No, of course not.</p> <p>25 MS. DEITSCH-PEREZ: So if you are</p>

<p>Page 348</p> <p>1 DONDERO - 10/29/21</p> <p>2 going to ask him, you will put it in front</p> <p>3 of him?</p> <p>4 MR. MORRIS: Of course.</p> <p>5 MS. DEITSCH-PEREZ: Thank you.</p> <p>6 Q. Are you prepared to testify today to</p> <p>7 the circumstances, communications, documents,</p> <p>8 and facts concerning NexPoint's affirmative</p> <p>9 defenses?</p> <p>10 A. Yeah, to the best that I can.</p> <p>11 Q. Okay. Do you see Topic 3 concerns</p> <p>12 the demand notes?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Are you prepared to testify</p> <p>15 about the demand notes, including with respect</p> <p>16 to the specific issues identified in that</p> <p>17 topic?</p> <p>18 MS. DEITSCH-PEREZ: Again, subject</p> <p>19 to the objections, particularly I think</p> <p>20 with respect to use of the proceeds.</p> <p>21 Q. We will get to that.</p> <p>22 Are you prepared to testify?</p> <p>23 A. I hope so.</p> <p>24 Q. And – and I know that there is an</p> <p>25 objection there, but just a simple yes or no,</p>	<p>Page 349</p> <p>1 DONDERO - 10/29/21</p> <p>2 are you – do you have knowledge of the – of</p> <p>3 NexPoint's use of the proceeds of the note?</p> <p>4 A. Not specifically.</p> <p>5 Q. All right. Maybe I will refresh</p> <p>6 your recollection later.</p> <p>7 And then the last topic is discovery</p> <p>8 requests.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Are you prepared to testify today on</p> <p>12 NexPoint's behalf concerning Highland's</p> <p>13 discovery requests?</p> <p>14 A. To the best of my knowledge.</p> <p>15 Q. Okay. Did you do anything to</p> <p>16 prepare for today's deposition?</p> <p>17 A. I met with Deborah.</p> <p>18 Q. When did you do that?</p> <p>19 A. A couple of days ago for a couple of</p> <p>20 hours, and a few days before that for a couple</p> <p>21 of hours.</p> <p>22 Q. How many times –</p> <p>23 MS. DEITSCH-PEREZ: Are you also</p> <p>24 asking about calls?</p> <p>25 MR. MORRIS: I appreciate that.</p>
<p>Page 350</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yeah. There were a couple of phone</p> <p>3 calls too.</p> <p>4 Q. How many times did you communicate</p> <p>5 with Deborah in preparation for today's</p> <p>6 deposition?</p> <p>7 A. A half dozen, maybe, you know.</p> <p>8 Q. How many times –</p> <p>9 A. You know, in-person and phone calls,</p> <p>10 but...</p> <p>11 Q. How many times did you meet with her</p> <p>12 in-person?</p> <p>13 A. Two, maybe three.</p> <p>14 Q. And can you just tell me an estimate</p> <p>15 of the total time spent preparing for this</p> <p>16 deposition, inclusive of both the meetings and</p> <p>17 the phone calls?</p> <p>18 A. I don't know. Does it matter? I</p> <p>19 mean, I don't know. I don't know, four hours,</p> <p>20 four hours.</p> <p>21 Q. Okay. Did anybody participate in</p> <p>22 these meetings or phone calls other than your</p> <p>23 lawyers?</p> <p>24 A. No.</p> <p>25 Q. Did any lawyers participate in any</p>	<p>Page 351</p> <p>1 DONDERO - 10/29/21</p> <p>2 of these meetings or phone calls who didn't</p> <p>3 represent you in your individual capacity?</p> <p>4 A. No. It was just – it was just</p> <p>5 Deborah and I.</p> <p>6 Q. Okay. Have you had a chance to</p> <p>7 review the transcript of Mr. Waterhouse's</p> <p>8 deposition?</p> <p>9 A. No. I haven't seen it yet.</p> <p>10 Q. You haven't seen any portion of that</p> <p>11 deposition?</p> <p>12 A. No.</p> <p>13 Q. Are you aware of anything that</p> <p>14 Mr. Waterhouse testified to in his deposition?</p> <p>15 A. No.</p> <p>16 Q. You have no knowledge of anything</p> <p>17 that Mr. Waterhouse said last week in his</p> <p>18 deposition; do I have that right?</p> <p>19 A. That's correct.</p> <p>20 Q. Okay. Do you have any knowledge as</p> <p>21 to anything your sister said in her deposition?</p> <p>22 A. No, other than she is glad it is</p> <p>23 over.</p> <p>24 Q. I hope – I hope – I hope she</p> <p>25 thinks at least I was respectful.</p>

<p>Page 352</p> <p>1 DONDERO - 10/29/21</p> <p>2 Did – did you ever see her</p> <p>3 transcript – the transcript from her</p> <p>4 deposition?</p> <p>5 A. No.</p> <p>6 Q. How about Mr. Seery, did you see the</p> <p>7 transcript from Mr. Seery's deposition?</p> <p>8 A. I didn't even know that Seery was</p> <p>9 deposed, so the answer is no.</p> <p>10 Q. Okay. Are you aware that Dave Klos</p> <p>11 was deposed?</p> <p>12 A. You know what, I think I had</p> <p>13 awareness of that, but I haven't seen that</p> <p>14 deposition.</p> <p>15 Q. Do you know anything about anything</p> <p>16 that he testified to the other day?</p> <p>17 A. Nope.</p> <p>18 Q. How about Kristin – Kristin</p> <p>19 Hendrix, are you aware that she was deposed?</p> <p>20 A. I think I heard that she was also.</p> <p>21 Q. Do you know anything about anything</p> <p>22 that she testified to?</p> <p>23 A. No.</p> <p>24 Q. Did you look at any documents to</p> <p>25 refresh your recollection in advance of this</p>	<p>Page 353</p> <p>1 DONDERO - 10/29/21</p> <p>2 deposition other than the stack that I provided</p> <p>3 and the deposition notices?</p> <p>4 A. I mean just – no, just a listing of</p> <p>5 the notes, but that is it.</p> <p>6 Q. Did you see any emails at all in</p> <p>7 connection with your preparation for today's</p> <p>8 deposition?</p> <p>9 A. No, not a single email.</p> <p>10 MR. MORRIS: Okay. Let's put up</p> <p>11 Exhibit 48, please.</p> <p>12 (Exhibit 48 marked.)</p> <p>13 Q. And I think you will see that this</p> <p>14 is the 30(b)(6) notice for HCMS. If we can go</p> <p>15 to the next page. And it is really the same –</p> <p>16 I will represent to you that the topics for</p> <p>17 HCMS are the same as the topics for NexPoint.</p> <p>18 Have you seen HCMS's 30(b)(6) notice</p> <p>19 that is up on the screen right now?</p> <p>20 A. Yes.</p> <p>21 Q. And if we took the time – if I took</p> <p>22 the time to ask you the same questions about</p> <p>23 your ability to answer on behalf of HCMS –</p> <p>24 HCMS with respect to the topics identified</p> <p>25 there and subject to your counsel's objections,</p>
<p>Page 354</p> <p>1 DONDERO - 10/29/21</p> <p>2 would you be able to do so?</p> <p>3 A. Yes.</p> <p>4 MR. MORRIS: Let's put up Exhibit</p> <p>5 49, please.</p> <p>6 (Exhibit 49 marked.)</p> <p>7 Q. And this is the 30(b)(6) notice for</p> <p>8 HCRE. You're here today to testify on behalf</p> <p>9 of HCRE as its corporate representative. Do</p> <p>10 you understand that?</p> <p>11 A. Yes.</p> <p>12 Q. And did you review the list of</p> <p>13 topics that we included in our 30(b)(6) notice</p> <p>14 for HCRE?</p> <p>15 A. Yes.</p> <p>16 Q. And subject to your counsel's</p> <p>17 objections, are you prepared to testify to the</p> <p>18 topics that are listed on the page that is up</p> <p>19 on the screen?</p> <p>20 A. Yes.</p> <p>21 MR. MORRIS: Okay. Can we please</p> <p>22 put up Exhibit 31.</p> <p>23 (Exhibit 31 marked.)</p> <p>24 Q. Mr. Dondero, we're putting up on the</p> <p>25 screen now your answer to the – to Highland's</p>	<p>Page 355</p> <p>1 DONDERO - 10/29/21</p> <p>2 amended complaint.</p> <p>3 MS. DEITSCH-PEREZ: Is that in the</p> <p>4 notebook?</p> <p>5 MR. MORRIS: No, no. This is one</p> <p>6 that we had – we had –</p> <p>7 MS. DEITSCH-PEREZ: All right. Hang</p> <p>8 on.</p> <p>9 MR. MORRIS: That's okay. That is</p> <p>10 why we're putting it up on the screen, and</p> <p>11 we will put it in the chat room. It is</p> <p>12 already in there, actually.</p> <p>13 MS. DEITSCH-PEREZ: Yeah, I think we</p> <p>14 have it here. Hold on. I think Nancy</p> <p>15 walked off with the duplicate of this, so</p> <p>16 if you need it, I will hand it to you.</p> <p>17 Q. Mr. Dondero, while we wait to see if</p> <p>18 your counsel has a hard copy, do you recall</p> <p>19 reviewing your answer to the plaintiff's</p> <p>20 amended complaint before it was filed?</p> <p>21 A. I don't know if I was involved at</p> <p>22 that juncture.</p> <p>23 Q. All right. So just to refresh your</p> <p>24 recollection, this is a document that was filed</p> <p>25 with the Court at the beginning of September.</p>

<p>Page 356</p> <p>1 DONDERO - 10/29/21</p> <p>2 If you recall, Highland filed an original</p> <p>3 complaint, and after you amended your answer</p> <p>4 late in August pursuant to an agreement,</p> <p>5 Highland filed amended complaints against</p> <p>6 certain of the obligors in the notes</p> <p>7 litigation.</p> <p>8 Does that refresh your recollection</p> <p>9 that this document was prepared in early</p> <p>10 September?</p> <p>11 A. Okay.</p> <p>12 Q. Okay.</p> <p>13 A. I don't have specific memory.</p> <p>14 Q. Okay. So as always, Mr. Dondero, we</p> <p>15 have done this many times before, if there is</p> <p>16 anything in the document that you think that</p> <p>17 you need to see because it is a little bit of a</p> <p>18 lengthy document, will you let me know that?</p> <p>19 A. Sure.</p> <p>20 MS. DEITSCH-PEREZ: Yeah. And we</p> <p>21 have a copy if you need to stop and take a</p> <p>22 look. We did get a hard copy. We have a</p> <p>23 hard copy here.</p> <p>24 Q. Okay.</p> <p>25 A. All right.</p>	<p>Page 357</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So – so let me ask the question</p> <p>3 again then: Do you recall, with that</p> <p>4 background, having reviewed and approved the</p> <p>5 filing of this document at the beginning of</p> <p>6 September 2021?</p> <p>7 A. Generally.</p> <p>8 Q. Okay. As you sit here today, are</p> <p>9 you aware of anything in this document that is</p> <p>10 inaccurate?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Okay. Are you aware of anything in</p> <p>13 the document that you believe should be</p> <p>14 modified or amended to make it more complete or</p> <p>15 more accurate?</p> <p>16 A. Not as of this moment.</p> <p>17 Q. Okay. Can we please go to Paragraph</p> <p>18 83. Okay. Right there.</p> <p>19 So do you see that on – on page 13</p> <p>20 of the exhibit, we have in Paragraphs 82</p> <p>21 through 91 what are called your affirmative</p> <p>22 defenses?</p> <p>23 A. Yes.</p> <p>24 Q. All right. I'm going to skip the</p> <p>25 one in 82 for the moment, but focusing on 83.</p>
<p>Page 358</p> <p>1 DONDERO - 10/29/21</p> <p>2 Can you just read that to yourself and tell me</p> <p>3 when you have done that?</p> <p>4 A. Yes.</p> <p>5 Q. Are you aware of any facts that</p> <p>6 concern this particular affirmative defense?</p> <p>7 A. Which notes are these again?</p> <p>8 Q. These would be your personal notes.</p> <p>9 A. The – personal notes. I'm trying</p> <p>10 to remember. No, I – well, if you read the</p> <p>11 question one more time.</p> <p>12 Q. Sure. Just so – so to make sure</p> <p>13 that you understand, because I'm not here to</p> <p>14 trick you, this is your answer to Highland's</p> <p>15 complaint against you where Highland is trying</p> <p>16 to recover on the notes that you signed.</p> <p>17 Do you understand that?</p> <p>18 A. Right.</p> <p>19 Q. Okay. So in Paragraph 83 you have</p> <p>20 asserted an affirmative defense that the</p> <p>21 plaintiff's claims are barred in whole or in</p> <p>22 part due to waiver.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you have any facts that you can</p>	<p>Page 359</p> <p>1 DONDERO - 10/29/21</p> <p>2 share with me that concern that particular</p> <p>3 affirmative defense?</p> <p>4 MS. DEITSCH-PEREZ: And, again, just</p> <p>5 in this particular answer.</p> <p>6 MR. MORRIS: That is all I'm asking</p> <p>7 about.</p> <p>8 Q. We're going to go through the answer</p> <p>9 for each one of them. So just one at a time.</p> <p>10 We're only talking about your – your notes.</p> <p>11 A. No, not the moment.</p> <p>12 Q. Let's go to Paragraph 84.</p> <p>13 Do you see Paragraph 84 states,</p> <p>14 among other things, that plaintiff's claims are</p> <p>15 barred, in whole or in part, due to estoppel?</p> <p>16 A. Yes.</p> <p>17 Q. Can you share with me any facts that</p> <p>18 you are aware of that concern that particular</p> <p>19 affirmative defense?</p> <p>20 A. No.</p> <p>21 Q. Okay. I'm going to skip over 85</p> <p>22 because I've gotten that answer elsewhere. If</p> <p>23 we can go to 86, do you see that Paragraph 86</p> <p>24 asserts as an affirmative defense, among other</p> <p>25 things, that, quote: Plaintiff's claims may be</p>



<p>Page 360</p> <p>1 DONDERO - 10/29/21</p> <p>2 barred, in whole or in part, due to failure of</p> <p>3 consideration, closed quote?</p> <p>4 A. Right, I see that.</p> <p>5 Q. Do you – do you – do you</p> <p>6 acknowledge that Highland transferred to you an</p> <p>7 amount of money equal to the principal amount</p> <p>8 on each of the notes that are at issue?</p> <p>9 A. I believe – yes.</p> <p>10 Q. Okay. I appreciate that.</p> <p>11 Do you have any facts that would</p> <p>12 support the affirmative defense that is set</p> <p>13 forth in Paragraph 86?</p> <p>14 A. No.</p> <p>15 Q. Okay. And then, finally,</p> <p>16 Paragraph 88 asserts, among other things, that</p> <p>17 the fraudulent transfer claim should be barred,</p> <p>18 in whole or in part, because the alleged</p> <p>19 fraudulent transfer – and I'm summarizing</p> <p>20 here – was taken in good faith and for</p> <p>21 reasonably equivalent value.</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Do you have any facts that</p> <p>25 concern that particular affirmative defense?</p>	<p>Page 361</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Let me read that one more time.</p> <p>3 Q. Take your time.</p> <p>4 A. I think that one is – I'm trying –</p> <p>5 I'm trying to remember if that one – if the</p> <p>6 partner defense is on alternative comp that</p> <p>7 could have been taken or forgiveness that was</p> <p>8 in lieu of other comp – I'm trying to remember</p> <p>9 if that falls under this category. I think it</p> <p>10 does.</p> <p>11 Q. Okay. Is there anything else that</p> <p>12 you can – any other facts that you can think</p> <p>13 of that concern the affirmative defense in</p> <p>14 Paragraph 88?</p> <p>15 A. I mean, the – yes. Okay. To the</p> <p>16 extent that the – in lieu of additional comp</p> <p>17 falls under there, so does the incentives to –</p> <p>18 the incentive to me to help monetize illiquid</p> <p>19 investments better faster.</p> <p>20 Q. And does that relate to the three</p> <p>21 portfolio companies that are the subject of the</p> <p>22 oral agreement between you and your sister or</p> <p>23 to something else?</p> <p>24 A. It is –</p> <p>25 MS. DEITSCH-PEREZ: Objection, form.</p>
<p>Page 362</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. – regarding that, yeah.</p> <p>3 Q. It is the same thing. Do I have</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Thank you very much.</p> <p>7 Is there anything else you can share</p> <p>8 with me about the facts that concern the</p> <p>9 affirmative defense in Paragraph 88?</p> <p>10 A. I think that is – that is – that</p> <p>11 is it.</p> <p>12 Q. Okay. Can we change now to</p> <p>13 Exhibit 16, which you should have in your pile,</p> <p>14 which is the answer that was filed by the HCMS</p> <p>15 to Highland's amended complaint.</p> <p>16 (Exhibit 16 marked.)</p> <p>17 A. Which number is this?</p> <p>18 Q. It is number 16.</p> <p>19 A. 16 in the binder?</p> <p>20 Q. It should be, yeah.</p> <p>21 A. Yes. Okay. I got it.</p> <p>22 Q. Okay. And is the first page titled</p> <p>23 Defendant, Highland Capital Management</p> <p>24 Services, Inc.'s Answer to Amended Complaint?</p> <p>25 A. Yes.</p>	<p>Page 363</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. So these questions I'm asking</p> <p>3 in your capacity as HCMS' 30(b)(6) witness.</p> <p>4 Okay?</p> <p>5 A. Okay.</p> <p>6 Q. And you recall that one of the</p> <p>7 topics under the deposition notice was HCMS'</p> <p>8 answer; right?</p> <p>9 Are you prepared to answer questions</p> <p>10 about this document?</p> <p>11 A. Yep, to the best I can.</p> <p>12 Q. Okay. Have you seen it before?</p> <p>13 A. Yes.</p> <p>14 Q. And do you know whether HCMS</p> <p>15 authorized this Stinson firm to file this</p> <p>16 document on its behalf at the beginning of</p> <p>17 2021?</p> <p>18 A. Yes.</p> <p>19 Q. Did you personally have any role in</p> <p>20 reviewing and preparing this document?</p> <p>21 A. I mean, just generally that the</p> <p>22 transition of former Judge Lynn passing and</p> <p>23 Bonds Ellis not being able to handle</p> <p>24 complexity – maybe I shouldn't say it like</p> <p>25 that – or handle this aspect of the case</p>

<p>Page 364</p> <p>1 DONDERO - 10/29/21</p> <p>2 and/or – I think it was – yeah, just</p> <p>3 whatever. He moved to Stinson from – I think</p> <p>4 maybe it started at Bonds Ellis and then maybe</p> <p>5 it went to Wick Phillips and then it went to</p> <p>6 Stinson, but, you know, there was a migration</p> <p>7 of these notes in general.</p> <p>8 Q. Was there a particular person who</p> <p>9 was charged with the responsibility of</p> <p>10 approving and authorizing the filing of this</p> <p>11 document on behalf of HCMS?</p> <p>12 A. Like I said, I think generally that</p> <p>13 was myself.</p> <p>14 Q. Okay. Are you aware of anything in</p> <p>15 this document today that is inaccurate in any</p> <p>16 way?</p> <p>17 A. Not specifically.</p> <p>18 Q. Are you aware of anything generally</p> <p>19 in this document that is inaccurate in any way?</p> <p>20 A. Not at the moment.</p> <p>21 Q. Are you aware of anything in this</p> <p>22 document that you believe should be modified or</p> <p>23 amended to make it more complete or more</p> <p>24 accurate?</p> <p>25 A. Not yet.</p>	<p>Page 365</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Let's go to Paragraph 40 – 94,</p> <p>3 please.</p> <p>4 MS. DEITSCH-PEREZ: We may be</p> <p>5 imperfect creatures as lawyers.</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 A. Yes.</p> <p>9 Q. Okay. I was just going to say, do</p> <p>10 you see from Paragraphs 94 through 102 HCMS has</p> <p>11 set forth its affirmative defenses?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Let's – let's start with the</p> <p>14 first one.</p> <p>15 Do you see in Paragraph 94 HCMS</p> <p>16 asserts that, quote: Plaintiff's claims are</p> <p>17 barred, in whole or in part, by the doctrine of</p> <p>18 justification and/or repudiation?</p> <p>19 A. Yes.</p> <p>20 Q. Are you aware of any facts that</p> <p>21 concern that particular defense?</p> <p>22 A. I believe this – they were material</p> <p>23 prepayments of the loan. I believe that is –</p> <p>24 those are the – they were material and</p> <p>25 numerous prepayments of the loan, which I think</p>
<p>Page 366</p> <p>1 DONDERO - 10/29/21</p> <p>2 was – that is incorporated into that defense.</p> <p>3 Q. Okay. We will talk about the – the</p> <p>4 details of that in a moment, but are there any</p> <p>5 other kind of broad statements that you can</p> <p>6 give me that identify facts related to this</p> <p>7 particular affirmative defense?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. That is all I have at the moment.</p> <p>11 Q. Okay. Do you know whether any</p> <p>12 document that HCMS ever filed with the</p> <p>13 bankruptcy court ever asserted, as in a</p> <p>14 defense, that they didn't have to pay because</p> <p>15 they had prepaid any obligations that were due</p> <p>16 and owing?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. I don't have awareness.</p> <p>20 Q. And this document doesn't – doesn't</p> <p>21 use the word "prepayment" anywhere, does it?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't know.</p> <p>25 Q. Do you know of anything that HCMS</p>	<p>Page 367</p> <p>1 DONDERO - 10/29/21</p> <p>2 ever did before this week to put Highland on</p> <p>3 notice that it contended that it didn't have to</p> <p>4 pay its obligations under the notes because of</p> <p>5 a prepayment defense?</p> <p>6 MS. DEITSCH-PEREZ: Object to the</p> <p>7 form.</p> <p>8 A. We have no records. I'm not sure we</p> <p>9 would have ever been in a position to – to do</p> <p>10 that. The – you know, we were relying on</p> <p>11 shared services from Highland, and Highland had</p> <p>12 all the records regarding the amounts and</p> <p>13 prepayments, et cetera.</p> <p>14 Q. When did you learn that HCMS had</p> <p>15 made a prepayment to Highland?</p> <p>16 A. I don't know, but I – I imagine –</p> <p>17 I imagine it was – if you are asking why it</p> <p>18 wasn't mentioned earlier but then mentioned</p> <p>19 later, it is because somewhere in that time</p> <p>20 period we became aware.</p> <p>21 Q. So you didn't – you didn't have</p> <p>22 knowledge of the prepayment until the debtor</p> <p>23 produced documents. Do I have that right?</p> <p>24 Withdrawn.</p> <p>25 How did you learn that HCMS made a</p>

<p>Page 368</p> <p>1 DONDERO - 10/29/21</p> <p>2 prepayment?</p> <p>3 A. I don't know. I just know that we</p> <p>4 became aware of that being a material fact</p> <p>5 somewhere along the line.</p> <p>6 Q. Do you remember when you learned</p> <p>7 that material fact?</p> <p>8 A. No.</p> <p>9 Q. Do you have any facts that you can</p> <p>10 share with me concerning the prepayment?</p> <p>11 A. Eventually there was a spreadsheet</p> <p>12 that summarized it, but I don't – I don't</p> <p>13 know – I don't know when that occurred.</p> <p>14 Q. Does – does this defense of</p> <p>15 prepayment apply to demand notes or a term</p> <p>16 note?</p> <p>17 A. I would – I would – I would say,</p> <p>18 you know, primarily a term note, but – yeah, I</p> <p>19 think primarily the term note because I think</p> <p>20 that was the one that was declared to be in</p> <p>21 default of share, you know, whatever, so I</p> <p>22 think it was regarding the term note.</p> <p>23 Q. Do you recall – do you have any</p> <p>24 knowledge as to when the prepayment was made?</p> <p>25 A. I believe there were numerous and</p>	<p>Page 369</p> <p>1 DONDERO - 10/29/21</p> <p>2 material prepayments, but I don't know exactly</p> <p>3 when they were made.</p> <p>4 Q. Do you know what year they were</p> <p>5 made?</p> <p>6 A. No, but – no, but – no, I don't.</p> <p>7 MS. DEITSCH-PEREZ: If you want,</p> <p>8 John, if you would like for him to give you</p> <p>9 dates, he could probably dig up the</p> <p>10 spreadsheet and give you dates, but you</p> <p>11 have it also.</p> <p>12 MR. MORRIS: Thank you. Okay. I</p> <p>13 think we're doing just fine here.</p> <p>14 Q. Do you know if there were any</p> <p>15 prepayments made by HCMS in 2018?</p> <p>16 A. I don't know the specifics off the</p> <p>17 top of my head.</p> <p>18 Q. Do you know if HCMS made any</p> <p>19 prepayments in 2019?</p> <p>20 A. I don't know the specifics off the</p> <p>21 top of my head.</p> <p>22 Q. Are you aware that under the term</p> <p>23 note, HCMS was required to pay annual</p> <p>24 installment payments at the end of each year?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 370</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. I wouldn't say it like that.</p> <p>4 Q. We will look – we will look at the</p> <p>5 documents in a few minutes.</p> <p>6 Are you aware of any facts that</p> <p>7 support the justification or repudiation</p> <p>8 defense in Paragraph 94 other than what you</p> <p>9 have testified to so far?</p> <p>10 A. I think it is largely the prepayment</p> <p>11 aspect of it that is captured there.</p> <p>12 Q. Okay. And – and – all right. I</p> <p>13 will leave it at that.</p> <p>14 Let's go to Paragraph 95. Do you</p> <p>15 see the affirmative defense in 95 is that,</p> <p>16 quote, plaintiff's claims are barred in whole</p> <p>17 or in part by the doctrine of estoppel.</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you have any facts as the</p> <p>21 30(b)(6) witness of HCMS that concern that</p> <p>22 particular affirmative defense?</p> <p>23 A. You know, I think for both 95 and</p> <p>24 96, the way I understand it is that was</p> <p>25 reliance on Highland's and Highland's screw-up,</p>	<p>Page 371</p> <p>1 DONDERO - 10/29/21</p> <p>2 to the extent that there was a screw-up, on the</p> <p>3 term loans.</p> <p>4 Q. What screw-up are you referring to?</p> <p>5 A. Well, we didn't have accountants or</p> <p>6 employees at Services, you know, and Services</p> <p>7 was relying on Highland and shared services to</p> <p>8 stay in compliance or to – on the various</p> <p>9 loans.</p> <p>10 Q. Did you ever personally instruct</p> <p>11 anybody in December of 2020 to make a payment</p> <p>12 on behalf of HCMS under the term note?</p> <p>13 A. To make – I'm sorry, is this –</p> <p>14 what was the timeframe again?</p> <p>15 Q. December 2020 – let's just say</p> <p>16 anytime in 2020. Did you, in your capacity as</p> <p>17 the person in control of HCMS, ever direct or</p> <p>18 authorize any person in the world to make a</p> <p>19 payment from HCMS to Highland in satisfaction</p> <p>20 of the obligation that was due under the term</p> <p>21 note at the end of the year?</p> <p>22 A. Not that – not that I recall.</p> <p>23 Q. Okay. Do you know whether anybody</p> <p>24 acting on behalf of HCMS ever instructed or</p> <p>25 authorized Highland to make a payment on</p>

<p>Page 372</p> <p>1 DONDERO - 10/29/21</p> <p>2 account of HCMS's term note to Highland?</p> <p>3 A. Well, again, and maybe I didn't say</p> <p>4 it clearly enough. I think there was a</p> <p>5 reliance in the due course aspect, especially</p> <p>6 on small amounts, and it would have been done</p> <p>7 by Highland personnel on behalf of Services.</p> <p>8 MR. MORRIS: Okay. Move to strike.</p> <p>9 Q. And I'm going to ask you,</p> <p>10 Mr. Dondero, to be patient with me and to</p> <p>11 listen carefully to my question.</p> <p>12 Are you aware of anybody acting on</p> <p>13 behalf of HCMS, whoever instructed Highland to</p> <p>14 make a payment in satisfaction of any payment</p> <p>15 that was due at the year-end of 2020 under the</p> <p>16 term note?</p> <p>17 A. Not specifically, but I'm saying I</p> <p>18 don't think it needed to be made specifically.</p> <p>19 Q. Okay. So you are not aware of any</p> <p>20 instruction that was ever given to Highland by</p> <p>21 HCMS to make the payment; is that fair? You</p> <p>22 relied on the course of dealing?</p> <p>23 A. Right. I relied on ordinary course.</p> <p>24 I don't believe there was a specific – I'm not</p> <p>25 aware of a specific request.</p>	<p>Page 373</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. And you were aware that the</p> <p>3 payment was due at the end of the year; isn't</p> <p>4 that right?</p> <p>5 MS. DEITSCH-PEREZ: Object to the</p> <p>6 form.</p> <p>7 A. Not – not specifically. There</p> <p>8 is – to be bona fide notes, there is – I know</p> <p>9 there is – there is tax structuring and things</p> <p>10 that the auditors want to see in terms of – of</p> <p>11 regular payment that everything just doesn't</p> <p>12 accrue indefinitely, but what those roles are</p> <p>13 and when and if it needs to be paid and whether</p> <p>14 it was by the end of the year or not.</p> <p>15 I'm generally not specifically</p> <p>16 knowledgeable of or involved in, and nor do I</p> <p>17 have an awareness that was it or could it have</p> <p>18 been satisfied by other payments throughout the</p> <p>19 year. I'm not – I'm not the person for that</p> <p>20 knowledge.</p> <p>21 Q. Now, do you recall in December of</p> <p>22 2020 there was some tension between you and</p> <p>23 Mr. Seery?</p> <p>24 A. Tension between me and Mr. Seery. I</p> <p>25 would say there was tension between Mr. Seery</p>
<p>Page 374</p> <p>1 DONDERO - 10/29/21</p> <p>2 and everybody. He was trying to steal the</p> <p>3 estate, you know, so yes.</p> <p>4 MR. MORRIS: I move to strike.</p> <p>5 Q. You were asked to resign from</p> <p>6 Highland in late September of 2020; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And you did resign as of October</p> <p>9 9th, 2020; correct?</p> <p>10 A. Yes.</p> <p>11 Q. And do you recall that in early</p> <p>12 December, Highland sought a temporary</p> <p>13 restraining order against you?</p> <p>14 A. Yes.</p> <p>15 Q. And do you recall that Highland</p> <p>16 obtained a temporary restraining order against</p> <p>17 you in early December?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you recall that the</p> <p>20 advisors that you controlled filed a motion</p> <p>21 against the debtor in mid December 2020?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. And do you recall that that</p> <p>24 motion was curved by the Court in the middle of</p> <p>25 December?</p>	<p>Page 375</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes, roughly.</p> <p>3 Q. And do you recall that at the end of</p> <p>4 November, Highland had given notice of</p> <p>5 termination of the shared services agreements</p> <p>6 with the advisors?</p> <p>7 A. I believe they did that multiple</p> <p>8 times or extended it multiple times. I can't</p> <p>9 remember if that was – if it was done then or</p> <p>10 not.</p> <p>11 Q. Okay. And it is your testimony that</p> <p>12 notwithstanding those facts and circumstances,</p> <p>13 you relied on Highland to make the payment that</p> <p>14 HCMS owed at the end of the year?</p> <p>15 A. Yes, absolutely. We were still</p> <p>16 deluded in terms of thinking that Seery was</p> <p>17 working to resolve the estate, not to steal the</p> <p>18 estate.</p> <p>19 MR. MORRIS: I move to strike.</p> <p>20 Q. Do you have any other facts and</p> <p>21 circumstances that relate to the affirmative</p> <p>22 defenses in Paragraphs 95 and 96?</p> <p>23 A. I mean, not at the moment, not that</p> <p>24 I want to volunteer. When you ask more</p> <p>25 questions about the specifics, I guess we will</p>

<p>Page 376</p> <p>1 DONDERO - 10/29/21</p> <p>2 get to some of it.</p> <p>3 Q. Well, I'm asking you questions now.</p> <p>4 You are the 30(b)(6) witness. This is one of</p> <p>5 the topics that you were supposed to be</p> <p>6 prepared to answer questions about, and I would</p> <p>7 just like to know everything that you have in</p> <p>8 your head as to facts that relate to these two</p> <p>9 affirmative defenses.</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 Q. Because if I don't ask the right</p> <p>13 question later, you know, we can't do that;</p> <p>14 right?</p> <p>15 So do you have any other facts that</p> <p>16 you are aware of that relate to these two</p> <p>17 particular affirmative defenses?</p> <p>18 MS. DEITSCH-PEREZ: John, the fact</p> <p>19 that it's a 30(b)(6) deposition doesn't</p> <p>20 absolve you of the necessity to ask</p> <p>21 questions.</p> <p>22 MR. MORRIS: I asked the question.</p> <p>23 Q. Can I please have an answer?</p> <p>24 A. Again, the notes in general are de</p> <p>25 minimis relative to asset values of Highland or</p>	<p>Page 377</p> <p>1 DONDERO - 10/29/21</p> <p>2 the counterparties. So the annual obligations</p> <p>3 are even more de minimis or a million bucks or</p> <p>4 less than a million bucks.</p> <p>5 There was never an intent, nor would</p> <p>6 there be a logical intent to – from my</p> <p>7 perspective or any of the entities that had</p> <p>8 notice to Highland to be in default. And it is</p> <p>9 not logical that they would do that for any</p> <p>10 purpose.</p> <p>11 And the facts around the curing</p> <p>12 quickly of the notes and getting the curing</p> <p>13 amounts from Highland and making the payments</p> <p>14 and Highland accepting them as they're defining</p> <p>15 what it took to cure it, I think, are all, you</p> <p>16 know, the key facts that make any, you know,</p> <p>17 acceleration argument, you know, ridiculous.</p> <p>18 Q. Okay. Anything else?</p> <p>19 A. That's it at this point.</p> <p>20 MR. MORRIS: Okay. Let's go to</p> <p>21 Exhibit 17, please.</p> <p>22 (Exhibit 17 marked.)</p> <p>23 Q. This is HCRE's answer. Do you see</p> <p>24 that, sir?</p> <p>25 A. Yes.</p>
<p>Page 378</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And I'm going to ask these questions</p> <p>3 in your capacity as the 30(b)(6) representative</p> <p>4 of HCRE. Do you understand that?</p> <p>5 A. Yes.</p> <p>6 Q. Have you seen this document before?</p> <p>7 A. Yes.</p> <p>8 Q. Are you aware of anything in this</p> <p>9 document that is inaccurate today?</p> <p>10 A. I mean, I think 96 we put in there</p> <p>11 similar to the other affirmative defenses in</p> <p>12 case there was a prepayment. But, again, we</p> <p>13 have been so blocked from getting information</p> <p>14 and detail we didn't know it at the time</p> <p>15 regarding, you know, prepayments.</p> <p>16 So I don't think the prepayment</p> <p>17 defense works for 96. So that would be my</p> <p>18 clarification of an inaccuracy.</p> <p>19 Q. Why do you believe that the</p> <p>20 prepayment defense doesn't work in Paragraph 96</p> <p>21 for HCRE?</p> <p>22 A. Because I don't think there were any</p> <p>23 prepayments.</p> <p>24 Q. All right. I appreciate that.</p> <p>25 A. We didn't – we didn't know it at</p>	<p>Page 379</p> <p>1 DONDERO - 10/29/21</p> <p>2 the time –</p> <p>3 Q. Okay.</p> <p>4 A. – we put this together.</p> <p>5 Q. Is there any other aspect of this</p> <p>6 document that you believe is inaccurate today?</p> <p>7 A. Not as far as I know.</p> <p>8 Q. Is there anything in this document</p> <p>9 that you believe should be modified or amended</p> <p>10 to make it more accurate or more complete?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. Not yet.</p> <p>14 Q. Okay. Looking at Paragraph 96, I</p> <p>15 believe you just testified that,</p> <p>16 notwithstanding the assertion of the defense</p> <p>17 therein, you are not aware of any facts</p> <p>18 concerning the prepayment defense that you</p> <p>19 described earlier for HCMS.</p> <p>20 Do I have that right?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do you have any facts at all</p> <p>23 that relate to the affirmative defense in</p> <p>24 Paragraph 96?</p> <p>25 A. I don't believe so at this moment.</p>



<p>Page 380</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. How about Paragraphs 97 and</p> <p>3 98? Do you have any facts that relate to those</p> <p>4 affirmative defenses?</p> <p>5 A. It would be the same answer as on</p> <p>6 the last one.</p> <p>7 Q. Okay. I appreciate that. And so –</p> <p>8 but we don't have to go over it again. I will</p> <p>9 just leave it at that.</p> <p>10 Let's go to Exhibit 15, please.</p> <p>11 (Exhibit 15 marked.)</p> <p>12 MR. MORRIS: This is the next –</p> <p>13 MS. DEITSCH-PEREZ: Hey, John.</p> <p>14 John, can we take a – like a very quick</p> <p>15 restroom break?</p> <p>16 MR. MORRIS: You know, if we could</p> <p>17 just get through this document, which</p> <p>18 shouldn't take long, then perhaps we can</p> <p>19 take a short half-hour lunch break.</p> <p>20 MS. DEITSCH-PEREZ: Well, we can</p> <p>21 take a short half-hour lunch break after we</p> <p>22 get through this, but I just need to run to</p> <p>23 the restroom.</p> <p>24 MR. MORRIS: Okay.</p> <p>25 MS. DEITSCH-PEREZ: So you can leave</p>	<p>Page 381</p> <p>1 DONDERO - 10/29/21</p> <p>2 the screen on if you want so that we can</p> <p>3 get back fast.</p> <p>4 MR. MORRIS: My pleasure, Deborah.</p> <p>5 No problem.</p> <p>6 MS. DEITSCH-PEREZ: Thank you.</p> <p>7 VIDEOGRAPHER: Off the record,</p> <p>8 12:40.</p> <p>9 (Recess taken 12:40 p.m. to 12:51 p.m.)</p> <p>10 Q. Before we go on to this document,</p> <p>11 sir, did HCRE have a shared services agreement</p> <p>12 with Highland?</p> <p>13 VIDEOGRAPHER: We're back on the</p> <p>14 record.</p> <p>15 MR. MORRIS: Oh, do I need to read</p> <p>16 the question again?</p> <p>17 COURT REPORTER: No, I've got it.</p> <p>18 A. I – I don't believe it is a formal</p> <p>19 written one. I think it is just a verbal one.</p> <p>20 Q. And who is the verbal agreement</p> <p>21 between?</p> <p>22 A. It was between Highland and HCRE.</p> <p>23 Now it is between NexPoint and HCRE.</p> <p>24 Q. And who entered into the agreement</p> <p>25 between Highland and HCRE?</p>
<p>Page 382</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I would give the same answer I gave</p> <p>3 before where it was just – it was just</p> <p>4 understood that we supported all the related</p> <p>5 entities or entrepreneurial efforts and it was,</p> <p>6 you know, modest amounts of work.</p> <p>7 There wasn't specific financial</p> <p>8 remuneration, but – and NexPoint is a good</p> <p>9 example, too. There was a significant track</p> <p>10 record gulf that was able to be used to raise</p> <p>11 other money.</p> <p>12 Q. I'm just asking you who entered into</p> <p>13 the agreement between Highland and – and HCRE</p> <p>14 for the provision of services by Highland?</p> <p>15 MS. DEITSCH-PEREZ: Asked and</p> <p>16 answered.</p> <p>17 A. Yeah, again, same answer as before.</p> <p>18 I don't think anybody specifically, formally</p> <p>19 did it.</p> <p>20 Q. Okay. Is it – are the terms of the</p> <p>21 agreement written down anywhere?</p> <p>22 A. No, like I said, it is just</p> <p>23 understood the accounting department and tax</p> <p>24 department would handle the accounting and tax</p> <p>25 for all entities.</p>	<p>Page 383</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Did the legal department also</p> <p>3 provide services to HCRE?</p> <p>4 A. It would depend on the specific</p> <p>5 entity. In the case of HCRE I think they used</p> <p>6 the – the two lawyers that worked at NexPoint.</p> <p>7 I don't think they used the legal</p> <p>8 staff per se. I think they – the shared</p> <p>9 services that they relied on were accounting</p> <p>10 and tax primarily.</p> <p>11 Q. Did Mark Patrick do work for HCRE</p> <p>12 while he was employed by Highland?</p> <p>13 A. Boy, I don't know. I imagine</p> <p>14 probably tax-related stuff.</p> <p>15 Q. Did HCRE ever pay Highland anything</p> <p>16 for the services that it received?</p> <p>17 MS. DEITSCH-PEREZ: Are you talking</p> <p>18 about cash or –</p> <p>19 MR. MORRIS: Please, please, please.</p> <p>20 – I'm trying to be really patient,</p> <p>21 Deborah, but please no speaking objections.</p> <p>22 Mr. Dondero is a very sophisticated man.</p> <p>23 We have done this many times</p> <p>24 together. He will ask me if he doesn't</p> <p>25 understand the question. And if you would</p>

<p>Page 384</p> <p>1 DONDERO - 10/29/21</p> <p>2 like to object, by all means. I don't have</p> <p>3 a problem with that. I don't.</p> <p>4 MS. DEITSCH-PEREZ: But I asked –</p> <p>5 (speaking simultaneously.)</p> <p>6 Q. Mr. Dondero – Mr. Dondero –</p> <p>7 Mr. Dondero, did HCRE ever pay anything to</p> <p>8 Highland for services rendered?</p> <p>9 MS. DEITSCH-PEREZ: Asked and</p> <p>10 answered.</p> <p>11 A. Yeah, that is what I was going to</p> <p>12 say. Same answer. You know, not – not a</p> <p>13 formal cash remuneration, but, you know, a –</p> <p>14 which wouldn't have been much anyway. But –</p> <p>15 but more in terms of track record and presence</p> <p>16 in the market that then Highland or NexPoint</p> <p>17 could use to further its business.</p> <p>18 Q. Are you saying that – that all of</p> <p>19 the entities were working kind of as a unified</p> <p>20 unit and got synergistic benefits from the work</p> <p>21 that it did?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. I don't want to over generalize and</p> <p>25 say yes to that, but – but there were</p>	<p>Page 385</p> <p>1 DONDERO - 10/29/21</p> <p>2 definitely – you know, when I use the DAF</p> <p>3 example, you know, we would have never got the</p> <p>4 Harvard vest as an investor if it wasn't for</p> <p>5 the track record that the DAF had in CLO</p> <p>6 equity.</p> <p>7 I think there is business that</p> <p>8 NexPoint got in the real estate space</p> <p>9 benefiting from the HCRE performance. So I do</p> <p>10 believe there was specific definable benefit</p> <p>11 gained for the modest amount of cost of</p> <p>12 services provided.</p> <p>13 Q. And you –</p> <p>14 A. There wasn't specific remuneration.</p> <p>15 Q. And you controlled all of these</p> <p>16 entities; right?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. Well, the DAF is independent and</p> <p>20 separate, but the – the HCRE-type entity, yes.</p> <p>21 Q. And did you decide that HCRE and</p> <p>22 HCMS and the DAF wouldn't be required to pay</p> <p>23 for services rendered to Highland?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p>Page 386</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. My recollection on the services and</p> <p>3 the HCRE is that the dollar value of the</p> <p>4 services provided was – was small and nominal.</p> <p>5 With regard to the DAF, it was more</p> <p>6 complicated. There is rules – there is</p> <p>7 charging rules in terms of fees and then there</p> <p>8 is also – I wasn't the one that decided that.</p> <p>9 And there are other issues there other than</p> <p>10 just the value for services argument.</p> <p>11 And so I don't – the short answer</p> <p>12 is, I don't know and I'm not involved in that,</p> <p>13 and I don't understand why sometimes there is</p> <p>14 one and sometimes there isn't one. Even to</p> <p>15 this day I don't know the answer to that.</p> <p>16 Q. Did – did – did you decide on</p> <p>17 behalf of Highland that Highland would provide</p> <p>18 services to DAF without receiving a stream of</p> <p>19 income in return?</p> <p>20 MS. DEITSCH-PEREZ: John, I think</p> <p>21 we're really far outside of either any of</p> <p>22 the 30(b)(6)s or the permissible topics for</p> <p>23 Mr. Dondero's personal deposition.</p> <p>24 So could you move on?</p> <p>25 MR. MORRIS: Okay. I will after I</p>	<p>Page 387</p> <p>1 DONDERO - 10/29/21</p> <p>2 get an answer to this question.</p> <p>3 A. Can you repeat the question?</p> <p>4 Q. Sure.</p> <p>5 Did you make the decision on behalf</p> <p>6 of Highland to provide services to the DAF</p> <p>7 without receiving a stream of income in return?</p> <p>8 MS. DEITSCH-PEREZ: Same objection.</p> <p>9 A. Yeah, I think I answered it with my</p> <p>10 rambling a few minutes ago, but the short</p> <p>11 answer is no.</p> <p>12 Q. Who made that decision? Who made</p> <p>13 that decision?</p> <p>14 MS. DEITSCH-PEREZ: Was that Mike's</p> <p>15 dog or yours?</p> <p>16 MR. MORRIS: That was my dog. I</p> <p>17 apologize.</p> <p>18 MS. DEITSCH-PEREZ: Okay.</p> <p>19 Q. Who made that decision, sir?</p> <p>20 A. I wasn't sure –</p> <p>21 MS. DEITSCH-PEREZ: Again – again,</p> <p>22 John, this is well beyond the scope of the</p> <p>23 30(b)(6)s or even anything permissible for</p> <p>24 Mr. Dondero's personal. And, in fact, you</p> <p>25 said last time that is it, that was my last</p>

<p>Page 388</p> <p>1 DONDERO - 10/29/21</p> <p>2 question. So...</p> <p>3 MR. MORRIS: That is – that is</p> <p>4 because I thought that he would say as the</p> <p>5 control person at the enterprise that he</p> <p>6 made the decision, but he said that he</p> <p>7 didn't.</p> <p>8 So I'm just asking one follow-up</p> <p>9 question. I just want to know – Deborah,</p> <p>10 please.</p> <p>11 Q. I just want to know who made the</p> <p>12 decision on behalf of Highland to render</p> <p>13 services to the DAF without receiving a stream</p> <p>14 of income in return.</p> <p>15 MS. DEITSCH-PEREZ: Object to the</p> <p>16 form of the question for all of the reasons</p> <p>17 I stated before.</p> <p>18 A. And I don't know the answer.</p> <p>19 Q. Okay. So looking back at the</p> <p>20 document on the screen, we're going to ask –</p> <p>21 I'm going to ask these questions in your</p> <p>22 capacity as NexPoint's 30(b)(6) representative,</p> <p>23 okay?</p> <p>24 A. Sure.</p> <p>25 Q. And do you understand that the</p>	<p>Page 389</p> <p>1 DONDERO - 10/29/21</p> <p>2 document on the screen is NexPoint's answer to</p> <p>3 Highland's amended complaint?</p> <p>4 A. Yes.</p> <p>5 Q. Did you review this document before?</p> <p>6 A. Just generally.</p> <p>7 Q. And did you authorize the filing of</p> <p>8 this document on behalf of NexPoint?</p> <p>9 A. Yes, yes.</p> <p>10 Q. Are you aware of anything in this</p> <p>11 document today that you believe to be</p> <p>12 inaccurate?</p> <p>13 A. I think the – on the affirmative</p> <p>14 defenses on the – do you remember on the prior</p> <p>15 one we had the – I think it was called</p> <p>16 justification as the first one, but there</p> <p>17 wasn't a prepay in that one?</p> <p>18 Q. Correct.</p> <p>19 A. I think this one there were prepay,</p> <p>20 but the justification defense is missing from</p> <p>21 the front here. And I think that is – I think</p> <p>22 if that were to continue – I think that is</p> <p>23 partly due to different law firms and what was</p> <p>24 known at the time, et cetera, but I would say</p> <p>25 that is – that is the – that is the one thing</p>
<p>Page 390</p> <p>1 DONDERO - 10/29/21</p> <p>2 that jumps out at me between the two.</p> <p>3 MR. MORRIS: Okay. Can we go to</p> <p>4 Paragraph 80, and let's see if we can see</p> <p>5 what Mr. Dondero is talking about.</p> <p>6 Q. Okay. So I'm just going to focus on</p> <p>7 the first three paragraphs, 80, 81, and 82, and</p> <p>8 ask you whether – whether you are aware of any</p> <p>9 facts that concern the affirmative defenses set</p> <p>10 forth in those paragraphs. And I think they're</p> <p>11 related, and that is why I'm asking you to do</p> <p>12 it all together, but we can do it one at a</p> <p>13 time, whatever you are comfortable with.</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form. I mean, other than the facts in</p> <p>16 those paragraphs?</p> <p>17 MR. MORRIS: You are doing it again,</p> <p>18 Deborah.</p> <p>19 MS. DEITSCH-PEREZ: It –</p> <p>20 MR. MORRIS: Please, please.</p> <p>21 MS. DEITSCH-PEREZ: John, when you</p> <p>22 ask questions – I understand Mr. Dondero</p> <p>23 is sophisticated, but he's also not a</p> <p>24 lawyer, and when you ask questions that are</p> <p>25 misleading, I'm going to interject</p>	<p>Page 391</p> <p>1 DONDERO - 10/29/21</p> <p>2 something.</p> <p>3 MR. MORRIS: It is completely</p> <p>4 improper. He doesn't need to be a lawyer.</p> <p>5 He's a 30(b)(6) witness, and I'm asking</p> <p>6 such a simple question, what facts do you</p> <p>7 have that support the affirmative defense.</p> <p>8 A. Okay. Is it okay if I repeat some</p> <p>9 of them from the prior one?</p> <p>10 Q. Sure. Whatever you are comfortable</p> <p>11 with.</p> <p>12 A. The – to the extent that – to the</p> <p>13 extent that the notes were prepaid – prepaid</p> <p>14 significantly, it is a real question on whether</p> <p>15 or not there could have been a breach at the</p> <p>16 end of the year, even if there wasn't a payment</p> <p>17 at the end of the year.</p> <p>18 There is no logical reason, nor</p> <p>19 would I have ever authorized or suggested no</p> <p>20 payment to put us on – in default due to a de</p> <p>21 minimis amount of money, like a few hundred</p> <p>22 thousand dollars, even if I was highly annoyed</p> <p>23 with Seery, even if we knew that Seery and</p> <p>24 Highland had overcharged NexPoint by whatever</p> <p>25 it was, 14, 16 million bucks, I would not have</p>

<p>Page 392</p> <p>1 DONDERO - 10/29/21</p> <p>2 let a small amount cause a – cause a breach.</p> <p>3 You know, the – how would I – how</p> <p>4 would I add to that now. The overpayment on</p> <p>5 the \$14 million, holding back additional shared</p> <p>6 services amount, made an inordinate amount of</p> <p>7 sense.</p> <p>8 There was supposed to be at that</p> <p>9 time – there was another netting from Seery in</p> <p>10 terms of wanting to be fair and reasonable, you</p> <p>11 know, with employees and with the transition of</p> <p>12 the estate, et cetera, and everything was going</p> <p>13 to get trued up.</p> <p>14 So I do believe there was an</p> <p>15 expectation of a netting, et cetera, but</p> <p>16 overall, Highland should have paid it. It</p> <p>17 shouldn't have let it breach the cause, but at</p> <p>18 least when I found out about it and they knew I</p> <p>19 was annoyed. And I told them I didn't want it</p> <p>20 to be in default, they gave me the numbers and</p> <p>21 the amounts to cure it in their mind, and they</p> <p>22 accepted it.</p> <p>23 Now, I think they should have gone</p> <p>24 back and incorporated prepaids and said that no</p> <p>25 amounts were due because of the prepaids, et</p>	<p>Page 393</p> <p>1 DONDERO - 10/29/21</p> <p>2 cetera, but the calculation that they came up</p> <p>3 to get it in compliance in good standing was a</p> <p>4 million 4. And just like we relied on them to</p> <p>5 pay it and keep us out of default, we relied on</p> <p>6 them to set the amount to cure.</p> <p>7 But I guess I would make the</p> <p>8 argument that it shouldn't have been, but</p> <p>9 again, I didn't want to mince – I didn't want</p> <p>10 to on small dollars make an argument that could</p> <p>11 get us in bigger trouble – bigger trouble. So</p> <p>12 it was easier to – to pay the million bucks</p> <p>13 than it was to argue that it wasn't due.</p> <p>14 Q. Did you at any time in your capacity</p> <p>15 as the person in control of NexPoint instruct</p> <p>16 anybody at Highland to make the payment that</p> <p>17 was due at the end of 2020?</p> <p>18 A. Not specifically to pay it or not</p> <p>19 specifically not to pay it. It was something,</p> <p>20 again, small and de minimis that I expected to</p> <p>21 be done in due course.</p> <p>22 MR. MORRIS: I move to strike.</p> <p>23 Q. It's a very simple question.</p> <p>24 Did you personally take any steps to</p> <p>25 ensure that NexPoint made the payment that was</p>
<p>Page 394</p> <p>1 DONDERO - 10/29/21</p> <p>2 due at the end of 2020?</p> <p>3 MS. DEITSCH-PEREZ: Asked and</p> <p>4 answered.</p> <p>5 A. Yes, I would like to repeat my same</p> <p>6 answer.</p> <p>7 Q. Did you tell anybody to make the</p> <p>8 payment on behalf of NexPoint at the end of</p> <p>9 2020?</p> <p>10 MS. DEITSCH-PEREZ: Asked and</p> <p>11 answered.</p> <p>12 A. I would like to give the same answer</p> <p>13 that you – you – you struck.</p> <p>14 Q. Can you just say yes or no, sir, did</p> <p>15 you tell anybody to make the payment at the end</p> <p>16 of 2020 on behalf of NexPoint?</p> <p>17 MS. DEITSCH-PEREZ: Asked and</p> <p>18 answered.</p> <p>19 A. I don't want to give anything beyond</p> <p>20 the answer that I gave.</p> <p>21 Q. Okay.</p> <p>22 A. I get myself in trouble because I</p> <p>23 paraphrase. I don't want to answer yes – I</p> <p>24 don't think yes or no would be an appropriate</p> <p>25 answer. I want to stay with the answer that I</p>	<p>Page 395</p> <p>1 DONDERO - 10/29/21</p> <p>2 gave.</p> <p>3 Q. Okay. I'm going to say the word</p> <p>4 "Yankees," and every time I say the word</p> <p>5 "Yankees" today, everybody should know that</p> <p>6 that is the question that I'm going to bring to</p> <p>7 the Court on a motion to compel, okay?</p> <p>8 It's a very simple question. It's a</p> <p>9 very simple question. I will ask one more</p> <p>10 time, and if you don't want to answer, that is</p> <p>11 fine.</p> <p>12 MS. DEITSCH-PEREZ: What –</p> <p>13 Q. Mr. Dondero – Mr. Dondero, in</p> <p>14 December of 2020, did you give anybody any</p> <p>15 instructions at Highland to make sure that</p> <p>16 NexPoint made the payment that was due at the</p> <p>17 end of the year?</p> <p>18 MS. DEITSCH-PEREZ: Asked and</p> <p>19 answered.</p> <p>20 A. I think that means I'm supposed to</p> <p>21 stick with the answer that I gave.</p> <p>22 MS. DEITSCH-PEREZ: You're on mute,</p> <p>23 John. John, you're on mute. John, you're</p> <p>24 on mute. John, we can't hear you.</p> <p>25 THE WITNESS: I do like it better</p>

<p style="text-align: right;">Page 396</p> <p>1 DONDERO - 10/29/21</p> <p>2 when he yells at me on mute.</p> <p>3 MS. DEITSCH-PEREZ: John, we can't</p> <p>4 hear you.</p> <p>5 COURT REPORTER: We can't hear you,</p> <p>6 John.</p> <p>7 MR. MORRIS: You can't hear me?</p> <p>8 COURT REPORTER: Now we can.</p> <p>9 MS. DEITSCH-PEREZ: Now we can hear</p> <p>10 you, but we couldn't hear you. It looks</p> <p>11 like you were yelling, but we couldn't hear</p> <p>12 you.</p> <p>13 A. I do like it better when you yell at</p> <p>14 me on mute.</p> <p>15 Q. I try not to yell at you, and I hope</p> <p>16 that you haven't perceived this -- we do have a</p> <p>17 videotape this time. So to the extent that</p> <p>18 anybody perceives your comment as suggesting</p> <p>19 that I have yelled at you, I would invite them</p> <p>20 to look at the video.</p> <p>21 MS. DEITSCH-PEREZ: Well, we said we</p> <p>22 couldn't hear you, but your animation</p> <p>23 looked like that.</p> <p>24 Q. Sir, can you identify any person in</p> <p>25 the world acting on behalf of NexPoint who</p>	<p style="text-align: right;">Page 397</p> <p>1 DONDERO - 10/29/21</p> <p>2 instructed Highland to make the payment that</p> <p>3 was due on the NexPoint term note in December</p> <p>4 of 2020?</p> <p>5 MS. DEITSCH-PEREZ: John, that is</p> <p>6 the fifth or sixth time.</p> <p>7 MR. MORRIS: It is a completely</p> <p>8 different question. Please.</p> <p>9 MS. DEITSCH-PEREZ: Could you read</p> <p>10 it back, if I was mistaken. So read it</p> <p>11 back.</p> <p>12 (Record read.)</p> <p>13 A. NexPoint did not have the accounting</p> <p>14 staff or the systems or the records or the</p> <p>15 knowledge to have any person in the world at</p> <p>16 NexPoint to give that instruction.</p> <p>17 So the long answer -- the short</p> <p>18 answer is no, but the long answer is we had</p> <p>19 been kept away from our books and records. I</p> <p>20 think we largely still don't have them, and</p> <p>21 there would -- I am not aware of anybody who --</p> <p>22 anybody in the world at NexPoint who made that</p> <p>23 request.</p> <p>24 Q. Frank Waterhouse was the treasurer</p> <p>25 of NexPoint in December of 2020; is that</p>
<p style="text-align: right;">Page 398</p> <p>1 DONDERO - 10/29/21</p> <p>2 correct?</p> <p>3 A. I think he was very much viewing his</p> <p>4 responsibilities as Highland related and as an</p> <p>5 employee of Highland. But yes, based on that</p> <p>6 incumbency certificate, but that is your --</p> <p>7 your question to ask Frank if he was taking</p> <p>8 that seriously, but NexPoint was relying on</p> <p>9 Highland.</p> <p>10 Q. Do you have any other facts that you</p> <p>11 are aware of that relate to the affirmative</p> <p>12 defenses set forth in Paragraphs 81 through 82?</p> <p>13 A. I think I -- I think I've said them</p> <p>14 all.</p> <p>15 MR. MORRIS: Okay. It is 2:13</p> <p>16 Eastern time. Let's just take a short</p> <p>17 half-hour lunch break, and let's return at</p> <p>18 2:45, or 1:45 Central.</p> <p>19 VIDEOGRAPHER: Off the record, 1:13.</p> <p>20 (Recess taken 1:13 p.m. to 1:48 p.m.)</p> <p>21 VIDEOGRAPHER: Back on the record,</p> <p>22 1:48.</p> <p>23 Q. Mr. Dondero, are you comfortable?</p> <p>24 A. Yes.</p> <p>25 Q. And are you able to proceed?</p>	<p style="text-align: right;">Page 399</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Did you speak with anybody</p> <p>4 during the break about the substance of this</p> <p>5 deposition?</p> <p>6 A. No.</p> <p>7 Q. You entered into certain oral</p> <p>8 agreements with your sister concerning some of</p> <p>9 the notes at issue in these lawsuits.</p> <p>10 Do I have that right?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. Can you rephrase or repeat, please?</p> <p>14 Q. Sure.</p> <p>15 You entered into certain oral</p> <p>16 agreements with your sister concerning certain</p> <p>17 of the notes at issue in these lawsuits.</p> <p>18 Do I have that right?</p> <p>19 MS. DEITSCH-PEREZ: Object --</p> <p>20 A. Yes.</p> <p>21 MS. DEITSCH-PEREZ: Object to the</p> <p>22 form. And I'm going to object -- object</p> <p>23 every time because it just -- just so it is</p> <p>24 on the record because you are saying "your</p> <p>25 sister" without giving her -- her capacity.</p>



<p>Page 400</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Okay.</p> <p>3 MS. DEITSCH-PEREZ: But I don't want</p> <p>4 to disrupt the deposition, so I'm just</p> <p>5 telling you why I'm doing it and he can</p> <p>6 continue to answer thereafter. That is why</p> <p>7 I'm doing it.</p> <p>8 Q. Okay. Can we – can we agree,</p> <p>9 Mr. Dondero, when I refer to your sister in the</p> <p>10 context of oral agreements that she was</p> <p>11 entering into those agreements with you as a</p> <p>12 representative of Dugaboy – as Dugaboy</p> <p>13 trustee, as representative for a majority of</p> <p>14 the class A interest holders of Highland?</p> <p>15 A. Yeah. How about just to make it</p> <p>16 simple let's just call it the Dugaboy trustee,</p> <p>17 and everybody will know that it is my sister</p> <p>18 and everybody will know that it is the majority</p> <p>19 of the class A unit holders.</p> <p>20 Q. Okay. Okay. I appreciate that and</p> <p>21 I will do just that.</p> <p>22 You entered into certain oral</p> <p>23 agreements with the Dugaboy trustee concerning</p> <p>24 certain of the notes at issue in these</p> <p>25 lawsuits; is that right?</p>	<p>Page 401</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Let's discuss the purpose of</p> <p>4 those oral agreements.</p> <p>5 MR. MORRIS: Can we put back up on</p> <p>6 the screen Mr. Dondero's answer.</p> <p>7 Q. And while we're doing that,</p> <p>8 Mr. Dondero, can you confirm that your sister</p> <p>9 is the only trustee of the Dugaboy Investment</p> <p>10 Trust?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. For what period of time are we</p> <p>14 talking about?</p> <p>15 Q. During the period of time at which</p> <p>16 you entered into the oral agreements with the</p> <p>17 Dugaboy trustee.</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. Yeah, I believe she has been the</p> <p>21 trustee since 2015 and remains so today. I</p> <p>22 don't have an awareness of – I don't have an</p> <p>23 awareness of another functional trustee.</p> <p>24 So some of these – sometimes</p> <p>25 complex trusts have other layers that are</p>
<p>Page 402</p> <p>1 DONDERO - 10/29/21</p> <p>2 called trustees but they're not trustees per</p> <p>3 se. But I think I'm over thinking it. But I'm</p> <p>4 not aware of anybody I've interacted with,</p> <p>5 other than her, as trustee with regard to the</p> <p>6 notes.</p> <p>7 Q. Okay. So up on the screen we</p> <p>8 have – no, that is the wrong document.</p> <p>9 MR. MORRIS: We need Exhibit 31,</p> <p>10 please.</p> <p>11 Yeah, there you go. That one.</p> <p>12 Perfect. Okay.</p> <p>13 MS. DEITSCH-PEREZ: 31 is not – oh,</p> <p>14 is that the '03 answer?</p> <p>15 MR. MORRIS: Correct, that is</p> <p>16 Mr. Dondero's answer.</p> <p>17 Q. Do you see that, sir, on the screen?</p> <p>18 MS. DEITSCH-PEREZ: Hang on. I'm</p> <p>19 going to get it again.</p> <p>20 Okay. If you want a hard copy, I</p> <p>21 have one here but he's got it up.</p> <p>22 Q. Do you see on the screen,</p> <p>23 Mr. Dondero, marked as Exhibit 31 is your</p> <p>24 answer to Highland's amended complaint?</p> <p>25 A. Yes.</p>	<p>Page 403</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Can we go to</p> <p>4 Paragraph 82, please.</p> <p>5 Q. Is it your understanding that</p> <p>6 Paragraph 82 describes, among other things, in</p> <p>7 general terms your oral agreements with –</p> <p>8 between you and the Dugaboy trustee?</p> <p>9 A. Yes.</p> <p>10 Q. Is it your position that the oral</p> <p>11 agreements that you entered into with your</p> <p>12 sister – withdrawn.</p> <p>13 Is it your contention that the oral</p> <p>14 agreements you entered into with the Dugaboy</p> <p>15 trustee applied to each of the notes that were</p> <p>16 executed by NexPoint and that are the subject</p> <p>17 of Highland's lawsuit against NexPoint?</p> <p>18 A. Yes.</p> <p>19 Q. Is it your contention that the oral</p> <p>20 agreements that were entered into with the</p> <p>21 Dugaboy trustee apply to the notes executed by</p> <p>22 HCMS that are the subject of Highland's lawsuit</p> <p>23 against HCMS?</p> <p>24 A. Yes.</p> <p>25 Q. Is it your contention that the oral</p>

<p>Page 404</p> <p>1 DONDERO - 10/29/21</p> <p>2 agreements between you and the Dugaboy trustee</p> <p>3 apply to the notes that were executed by HCRE</p> <p>4 that are the subject of the lawsuit that</p> <p>5 Highland has commenced against HCRE?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do I understand correctly</p> <p>8 that your oral agreements with your sister do</p> <p>9 not apply to the notes that were executed on</p> <p>10 behalf of HCMFA that are the subject of the</p> <p>11 lawsuit that Highland commenced against HCMFA?</p> <p>12 A. Correct.</p> <p>13 Q. Okay. I appreciate that.</p> <p>14 Do you see in this paragraph towards</p> <p>15 the middle it says, quote: The purpose of this</p> <p>16 agreement was to provide compensation to</p> <p>17 defendant, James Dondero, who was otherwise</p> <p>18 underpaid, compared to reasonable compensation</p> <p>19 levels in the industry through the use of</p> <p>20 forgivable loans, a practice that was standard</p> <p>21 at HCMLP in the industry.</p> <p>22 Have I read that correctly?</p> <p>23 A. Yes.</p> <p>24 Q. Is that the purpose of the agreement</p> <p>25 that you entered into with your sister –</p>	<p>Page 405</p> <p>1 DONDERO - 10/29/21</p> <p>2 withdrawn.</p> <p>3 Is that the purpose of the agreement</p> <p>4 that you entered into with the Dugaboy trustee</p> <p>5 concerning the notes at issue in the lawsuits</p> <p>6 that were commenced against you personally?</p> <p>7 Withdrawn. That was a bad question.</p> <p>8 Does that purpose apply only to the</p> <p>9 notes that you executed or does it apply to the</p> <p>10 corporate notes as well?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 Other than HCMFA?</p> <p>14 MR. MORRIS: Correct. I think we've</p> <p>15 established the scope of the agreements.</p> <p>16 A. To give a complete answer, from my</p> <p>17 perspective it is about 50 million of notes</p> <p>18 between – current balance between NexPoint,</p> <p>19 Services, myself, and HCRE.</p> <p>20 Q. And HCMS; right?</p> <p>21 A. Yes, Services, Highland Capital</p> <p>22 Management, yes.</p> <p>23 Q. Okay. So I just want to know, that</p> <p>24 sentence there concerning the purpose was</p> <p>25 omitted from the answers of NexPoint, HCMS,</p>
<p>Page 406</p> <p>1 DONDERO - 10/29/21</p> <p>2 HCRE.</p> <p>3 And I'm happy to walk you through to</p> <p>4 show you. And I just want to know in your</p> <p>5 capacity as a 30(b)(6) witness for those</p> <p>6 entities, if you know why that statement of</p> <p>7 purpose was omitted.</p> <p>8 A. Well, we talked about it earlier. I</p> <p>9 think there is some cleanup. There has been</p> <p>10 multiple lawyers involved. We didn't know</p> <p>11 which loans were prepaid, which loans weren't.</p> <p>12 But, you know, I don't know why it was omitted</p> <p>13 but it applies to all of them.</p> <p>14 MS. DEITSCH-PEREZ: I think that is</p> <p>15 the first time that I've noticed that. So,</p> <p>16 John, I'm going to take a mea culpa. I</p> <p>17 think that is a cut-and-paste error.</p> <p>18 MR. MORRIS: All right. Well, I</p> <p>19 will – I will just point out that the</p> <p>20 affirmative defense concerning the oral</p> <p>21 agreements is the exact same in all four</p> <p>22 answers, except for the omission of the</p> <p>23 statement of purpose for the three</p> <p>24 corporate entities.</p> <p>25 Q. And so, Mr. Dondero, is it fair to</p>	<p>Page 407</p> <p>1 DONDERO - 10/29/21</p> <p>2 say that you don't know why that statement of</p> <p>3 purpose was omitted from the corporate</p> <p>4 entities' answers?</p> <p>5 A. Yeah, I don't know why it is omitted</p> <p>6 or why the complaints aren't consistent with</p> <p>7 that regard.</p> <p>8 Q. Okay. But it is your – it is your</p> <p>9 position as the purpose – as one of the people</p> <p>10 who entered into this oral agreement that the</p> <p>11 purpose for the – for the condition subsequent</p> <p>12 agreement is the same as for the corporate</p> <p>13 entities as it is for you, as stated in this</p> <p>14 paragraph; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. We talked a little bit about</p> <p>17 the NexPoint term note.</p> <p>18 Do you remember that?</p> <p>19 A. Yes.</p> <p>20 Q. And do you recall that in its</p> <p>21 original form the NexPoint term note was for a</p> <p>22 principal amount of approximately \$30 million?</p> <p>23 A. Yes.</p> <p>24 Q. And do you recall that the NexPoint</p> <p>25 term note was a rollover of the outstanding</p>

<p>Page 408</p> <p>1 DONDERO - 10/29/21</p> <p>2 principal and interest then due on certain</p> <p>3 promissory notes that had previously been given</p> <p>4 by NexPoint to Highland?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 MR. MORRIS: Can we put up, please,</p> <p>8 Exhibit Number 2, which I believe is the</p> <p>9 complaint against NexPoint.</p> <p>10 (Exhibit 2 marked.)</p> <p>11 MR. MORRIS: And if we can go to</p> <p>12 Exhibit Number 1 of Deposition Exhibit</p> <p>13 Number 2.</p> <p>14 Q. Okay. And do you see – I'm sorry,</p> <p>15 sir, do you see that Exhibit Number 1 to the</p> <p>16 complaint is a promissory note dated May 31st,</p> <p>17 2017 in the approximate amount of</p> <p>18 \$30.75 million?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And is that your signature on</p> <p>21 page 2?</p> <p>22 A. Looks like it.</p> <p>23 Q. Okay. And did you sign this note on</p> <p>24 behalf of NexPoint on or around May 31st, 2017?</p> <p>25 A. I assume so.</p>	<p>Page 409</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Do you know if you read the note</p> <p>3 before you signed it?</p> <p>4 A. Not likely.</p> <p>5 Q. Do you recall whether there was</p> <p>6 anything about the note that you didn't</p> <p>7 understand before you signed it on behalf of</p> <p>8 NexPoint?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. Yeah, I'm not – I doubt I read it,</p> <p>12 so I don't remember objecting to anything.</p> <p>13 Q. Okay. Looking at Paragraph 2.1, am</p> <p>14 I characterizing that section fairly when I say</p> <p>15 that the borrower was required to make an</p> <p>16 annual installment payment at the end of each</p> <p>17 calendar year?</p> <p>18 MS. DEITSCH-PEREZ: Object to the</p> <p>19 form.</p> <p>20 A. I see that paragraph, yes.</p> <p>21 Q. Okay. And did you understand when</p> <p>22 you signed it that an annual installment</p> <p>23 payment would be due at the end of each year by</p> <p>24 NexPoint?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>
<p>Page 410</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. I never read it that closely.</p> <p>4 Q. So as the control person of</p> <p>5 NexPoint, is it fair to say then that you don't</p> <p>6 recall having an understanding when you signed</p> <p>7 this note that NexPoint would be required to</p> <p>8 make annual payments at the end of each year?</p> <p>9 MS. DEITSCH-PEREZ: Object to the</p> <p>10 form.</p> <p>11 A. I didn't have knowledge of the</p> <p>12 specifics, and again, I would describe those</p> <p>13 specifics as de minimis.</p> <p>14 Q. Okay. Do you see – do you have any</p> <p>15 idea who drafted this note?</p> <p>16 A. It would have come from accounting.</p> <p>17 I think they have boilerplate – I don't know</p> <p>18 if they work with legal at all. I have no</p> <p>19 idea, but it would have come through</p> <p>20 accounting.</p> <p>21 Q. Do you recall that all three of the</p> <p>22 term notes at issue were signed on the same</p> <p>23 day, May 31st, 2017?</p> <p>24 A. That doesn't surprise me. I think</p> <p>25 there was an accounting reason, if I remember</p>	<p>Page 411</p> <p>1 DONDERO - 10/29/21</p> <p>2 correctly. I think it had something to do with</p> <p>3 either the audit or the financials or if we had</p> <p>4 a credit facility at the time. I think that is</p> <p>5 probably why, but I don't remember exactly.</p> <p>6 Q. Do you have any other recollection</p> <p>7 as to why all three notes were executed at the</p> <p>8 end of May 2017?</p> <p>9 A. Again, I believe they're – the –</p> <p>10 aggregating or solidifying them into one</p> <p>11 defined note I think was required by the</p> <p>12 auditors or the – the accounting department as</p> <p>13 best practices. I don't think – it wasn't a</p> <p>14 regulatory reason and it wasn't a compliance</p> <p>15 reason. I believe it was just an accounting or</p> <p>16 an audit reason.</p> <p>17 Q. Did you ever make sure on behalf of</p> <p>18 NexPoint that the terms of the promissory note</p> <p>19 were fair and reasonable?</p> <p>20 MS. DEITSCH-PEREZ: Object to the</p> <p>21 form.</p> <p>22 A. Yeah, I don't remember ever</p> <p>23 negotiating or reading it that closely. And</p> <p>24 again, I think the view from all concerned is</p> <p>25 that it was relatively de minimis from the</p>

<p>Page 412</p> <p>1 DONDERO - 10/29/21</p> <p>2 balance sheet at Highland then or now and/or de</p> <p>3 minimis relevant to NexPoint's value.</p> <p>4 Q. It is a \$30 million note. Do I have</p> <p>5 that right?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And it was material enough to</p> <p>8 be included in Highland's financial statements;</p> <p>9 is that correct?</p> <p>10 A. Anything material or not as part of</p> <p>11 doing proper audited financials needs to be</p> <p>12 properly included.</p> <p>13 Q. Okay. And you know, because you</p> <p>14 signed the management representation letter,</p> <p>15 that this note was specifically disclosed to</p> <p>16 PwC and included in both Highland's and</p> <p>17 NexPoint's audited financial statements;</p> <p>18 correct?</p> <p>19 A. I would – I would have been shocked</p> <p>20 if it wasn't, if it is an asset and a liability</p> <p>21 respectively of the companies.</p> <p>22 Q. Okay. Do you see the section on</p> <p>23 acceleration upon default, Paragraph 4?</p> <p>24 A. Yes.</p> <p>25 Q. Have you ever seen that section</p>	<p>Page 413</p> <p>1 DONDERO - 10/29/21</p> <p>2 before?</p> <p>3 A. No.</p> <p>4 Q. Do you think a prudent executive</p> <p>5 signing a \$30 million note should take the time</p> <p>6 to read the terms and conditions of the note?</p> <p>7 A. Not necessarily.</p> <p>8 Q. Under what circumstances do you</p> <p>9 think that an executive shouldn't take the time</p> <p>10 to read the terms and conditions of a</p> <p>11 \$30 million promissory note?</p> <p>12 A. When it is between affiliates,</p> <p>13 between friendly affiliates with no even</p> <p>14 inkling that bankruptcy or the parties could be</p> <p>15 at odds create a note, when it is a soft note</p> <p>16 with limited collateral and limited other</p> <p>17 protections. And then the servicing or value</p> <p>18 of the note is de minimis relative to the</p> <p>19 balance sheets of each entity I think is a good</p> <p>20 reason or logical reason for the executives on</p> <p>21 both sides not to spend much time focusing on</p> <p>22 it.</p> <p>23 Q. All right. So you thought it was</p> <p>24 reasonable not to read this particular note for</p> <p>25 the reasons you just gave.</p>
<p>Page 414</p> <p>1 DONDERO - 10/29/21</p> <p>2 Do I have that right?</p> <p>3 A. Right.</p> <p>4 MR. MORRIS: Okay. Can we go to the</p> <p>5 next page, please.</p> <p>6 Q. Do you see Paragraph 5? There is a</p> <p>7 paragraph entitled Waiver.</p> <p>8 A. Yes.</p> <p>9 Q. And I will read it out loud: Maker</p> <p>10 hereby waives grace, demand, presentment for</p> <p>11 payment, notice of non-payment, protest, notice</p> <p>12 of protest, notice of intent to accelerate,</p> <p>13 notice of acceleration, and all other notices</p> <p>14 of any kind hereunder.</p> <p>15 Have I read that correctly?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know that that paragraph is</p> <p>18 included in every single note that you signed</p> <p>19 that is part of the litigation that we're here</p> <p>20 to talk about today?</p> <p>21 A. You have to – you have to define</p> <p>22 when. You know, like today I know that it</p> <p>23 is – it is in those notes.</p> <p>24 At the end of '20, Seery and DSI</p> <p>25 were withholding all notes, all information,</p>	<p>Page 415</p> <p>1 DONDERO - 10/29/21</p> <p>2 anything regarding the company from any of the</p> <p>3 other subsidiaries, and Frank was administering</p> <p>4 the notes on behalf of both the related parties</p> <p>5 and Highland.</p> <p>6 So at the time – at the time I</p> <p>7 would have – I would have never known that at</p> <p>8 the end of 2020. And it is crazy to think I</p> <p>9 would have remembered a clause in a soft note</p> <p>10 from three years earlier.</p> <p>11 Q. Okay. Is it fair to say that – do</p> <p>12 you understand today that that provision is</p> <p>13 included in every note that you signed?</p> <p>14 MS. DEITSCH-PEREZ: Object to the</p> <p>15 form.</p> <p>16 A. You're saying it, so I believe you.</p> <p>17 I'm not asking you to go show me all the other</p> <p>18 notes, but –</p> <p>19 Q. Thank you.</p> <p>20 A. – I'm assuming it is in all the</p> <p>21 other notes. I will take your word for it.</p> <p>22 Q. And is it fair to say that at the</p> <p>23 time you signed these notes you didn't take the</p> <p>24 time to read that particular provision?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>

<p>Page 416</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. That is correct. A lot of it is</p> <p>4 boilerplate. And, again, treasury or</p> <p>5 accounting would have put in what was necessary</p> <p>6 for regulatory, tax, audit purposes. Maybe the</p> <p>7 auditors put that in. I have no idea.</p> <p>8 But the content and the bullet</p> <p>9 points here, the nine paragraphs on a soft note</p> <p>10 would have been put in by other people and</p> <p>11 administered by other people other than me.</p> <p>12 Q. What is a soft note?</p> <p>13 A. You know, like a secured – I mean,</p> <p>14 a note that isn't a hard note, like a note that</p> <p>15 isn't secured, deed in lieu, UCC filed,</p> <p>16 guaranteed, you know, performance and bad boy</p> <p>17 clauses and all of that other stuff.</p> <p>18 A soft note is an unsecured loan</p> <p>19 that has basic terms to it, but it is likely</p> <p>20 subject to renegotiation over time.</p> <p>21 Q. Were any of the notes that you</p> <p>22 signed subject to negotiation?</p> <p>23 A. Well, I'm saying by definition that</p> <p>24 is what a soft note is.</p> <p>25 Q. One that – that is not subject to</p>	<p>Page 417</p> <p>1 DONDERO - 10/29/21</p> <p>2 the negotiation – to negotiations?</p> <p>3 A. No, one that is over time subject to</p> <p>4 negotiation or modification.</p> <p>5 Q. Okay.</p> <p>6 A. Because there is – there is</p> <p>7 limited – there is limited, team collateral,</p> <p>8 guarantee, bad boy features in – in a soft</p> <p>9 note.</p> <p>10 Q. Okay. Perhaps my question wasn't</p> <p>11 clear.</p> <p>12 Did the notes that you signed – did</p> <p>13 you negotiate them with anybody, the terms of</p> <p>14 each note?</p> <p>15 A. No.</p> <p>16 Q. Okay. Did you personally decide on</p> <p>17 the terms of each note?</p> <p>18 A. No. Again, they were two highly</p> <p>19 solvent, highly well-capitalized subsidiaries,</p> <p>20 and the amount of the notes was de minimis and</p> <p>21 friendly, and they were soft notes administered</p> <p>22 by a centralized treasury shared services</p> <p>23 department.</p> <p>24</p> <p>25 They were the ones deciding what it</p>
<p>Page 418</p> <p>1 DONDERO - 10/29/21</p> <p>2 took to be compliant from an accounting</p> <p>3 regulatory-wise standpoint, but wasn't – they</p> <p>4 were trying to come up with a balance note,</p> <p>5 which I think this is, such that it wouldn't</p> <p>6 have to be negotiated or haggled by any of the</p> <p>7 parties.</p> <p>8 And there is no evidence of any of</p> <p>9 the notes ever being haggled or ever being</p> <p>10 negotiated.</p> <p>11 Q. Okay. I appreciate that.</p> <p>12 At the time you signed each of the</p> <p>13 notes on behalf of the obligors, did the</p> <p>14 obligors have an intention at the time you put</p> <p>15 your signature on the page of repaying the</p> <p>16 notes in accordance with their terms?</p> <p>17 A. Yes. They're all – soft note</p> <p>18 doesn't mean it's not a bona fide note. They</p> <p>19 were all intended to be bona fide notes, and</p> <p>20 they all are bona fide notes that were intended</p> <p>21 to be paid and for the – virtually most part,</p> <p>22 were always paid or prepaid and, you know, paid</p> <p>23 in accordance.</p> <p>24 Q. Do you see to the right there is a</p> <p>25 list of prior notes?</p>	<p>Page 419</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. And is it your understanding that</p> <p>4 this note substituted and superseded the</p> <p>5 promissory notes that are listed on Exhibit A</p> <p>6 on the page there?</p> <p>7 A. Yeah. I mean, effectively pay those</p> <p>8 off and reestablish an aggregate note.</p> <p>9 Q. Right. And Exhibit A actually set</p> <p>10 forth the outstanding principal and interest</p> <p>11 that NexPoint owed Highland under the prior</p> <p>12 notes as defined there as of May 31st, 2017;</p> <p>13 right?</p> <p>14 A. Yeah, that is what it looks like.</p> <p>15 Q. Okay. And – and so the initial</p> <p>16 principal amount of the prior notes was what is</p> <p>17 stated there, approximately \$27.675 million?</p> <p>18 A. Right.</p> <p>19 Q. Okay. You wouldn't have signed this</p> <p>20 note on behalf of NexPoint if you didn't</p> <p>21 believe at the time you signed it that NexPoint</p> <p>22 owed Highland that amount of money; correct?</p> <p>23 A. Yeah, it is a bona fide note,</p> <p>24 consistent with my testimony.</p> <p>25 Q. Okay. Do you know why NexPoint</p>



<p>Page 420</p> <p>1 DONDERO - 10/29/21</p> <p>2 borrowed the money from Highland at the times</p> <p>3 and in the amounts listed on Exhibit A?</p> <p>4 A. No.</p> <p>5 Q. Did you authorize NexPoint to borrow</p> <p>6 the money that is reflected in the prior note</p> <p>7 set forth on Exhibit A?</p> <p>8 A. I don't know. Probably some of</p> <p>9 them, yes.</p> <p>10 Q. Okay. And you have no recollection</p> <p>11 at all as to why NexPoint borrowed over</p> <p>12 \$27 million from Highland in the 12-month</p> <p>13 period from August 2014 to July 2015?</p> <p>14 A. Not without being refreshed.</p> <p>15 Q. Okay. Do you have any knowledge as</p> <p>16 to what NexPoint did with the proceeds from</p> <p>17 these loans?</p> <p>18 A. Not without being refreshed.</p> <p>19 Q. Okay. And you contend that this</p> <p>20 note is subject to – subject to one of your</p> <p>21 oral agreements with the Dugaboy trustee;</p> <p>22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Who decided to include this</p> <p>25 particular note in your agreement with the</p>	<p>Page 421</p> <p>1 DONDERO - 10/29/21</p> <p>2 Dugaboy trustee?</p> <p>3 A. Me, myself.</p> <p>4 Q. Okay. What was the purpose of</p> <p>5 including this note in your agreement with the</p> <p>6 Dugaboy trustee?</p> <p>7 Was it to provide you with a</p> <p>8 compensation?</p> <p>9 A. Yeah. I mean, in fact, I think it</p> <p>10 was articulated in that big paragraph</p> <p>11 reasonably well that my cash compensation, I</p> <p>12 believe through any lens, people would look at</p> <p>13 it as de minimis from the standpoint of</p> <p>14 Highland as asset manager.</p> <p>15 I don't think it was more than a</p> <p>16 couple million bucks in a year and it went</p> <p>17 down, I think, in the '15 through '20 period.</p> <p>18 So I think it is common in private</p> <p>19 companies to loan money that is bona fide debt</p> <p>20 and then forgive it at different times to</p> <p>21 manage compensation and incentives to managers</p> <p>22 of private companies.</p> <p>23 This is a – we're in – we each</p> <p>24 have experts talking about it, but I think this</p> <p>25 is, you know, typical.</p>
<p>Page 422</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Can you identify any moment in the</p> <p>3 25 or 26 year history that you were president</p> <p>4 of Highland where Highland forgave an</p> <p>5 intercompany loan for the purpose of providing</p> <p>6 compensation to you or any other employee</p> <p>7 except for the agreements that are described in</p> <p>8 Paragraph 82 of your answer?</p> <p>9 A. Boy, I know we have masked it. I</p> <p>10 don't know if we – it sounds like we may not</p> <p>11 have sent it to you, but we have done it for a</p> <p>12 dozen employees over the years in – in fairly</p> <p>13 significant amount –</p> <p>14 Q. I'm going to interrupt you, sir,</p> <p>15 because it's not responsive to my question. I</p> <p>16 apologize for that. I'm just focusing on</p> <p>17 intercompany loans.</p> <p>18 Can you identify any loan in the 25</p> <p>19 or 26 years that you were president, an</p> <p>20 intercompany loan where – where Highland was</p> <p>21 the payee that was forgiven for purposes of</p> <p>22 giving you or any employee compensation, other</p> <p>23 than – other than the agreements that you</p> <p>24 struck with the Dugaboy trustee?</p> <p>25 A. It is an odd question because I'm</p>	<p>Page 423</p> <p>1 DONDERO - 10/29/21</p> <p>2 the only one at the compensation level with the</p> <p>3 interrelated entities who could possibly get</p> <p>4 intercompany loans forgiven as part of the</p> <p>5 comp, but it –</p> <p>6 Q. Okay. So let me ask a cleaner –</p> <p>7 let me ask a cleaner question. I appreciate</p> <p>8 that clarification.</p> <p>9 Other than the agreements described</p> <p>10 in Paragraph 82, can you think of any other</p> <p>11 intercompany loan that was ever forgiven while</p> <p>12 you were president of Highland for the purpose</p> <p>13 of giving you compensation?</p> <p>14 A. I don't – I don't know.</p> <p>15 Q. This is an important issue; right?</p> <p>16 The notion of a prior practice. It is your</p> <p>17 contention that there was a prior practice at</p> <p>18 Highland – hold on one second. I apologize.</p> <p>19 Sorry about that. Somebody almost</p> <p>20 dropped an air conditioner out the window.</p> <p>21 MS. DEITSCH-PEREZ: That would not</p> <p>22 be good.</p> <p>23 MR. MORRIS: No.</p> <p>24 Q. All right. Apologies.</p> <p>25 MR. MORRIS: May I have the last</p>

<p>Page 424</p> <p>1 DONDERO - 10/29/21</p> <p>2 question read back?</p> <p>3 (Record read.)</p> <p>4 Q. I'm going to start all over here.</p> <p>5 Mr. Dondero, do you contend that</p> <p>6 there was a practice at Highland of forgiving</p> <p>7 loans; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And do you recall that we talked</p> <p>10 about that issue back in May?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And since – since that time</p> <p>13 have you made any effort to gather any</p> <p>14 information that would demonstrate that there</p> <p>15 was a prior practice at Highland of forgiving</p> <p>16 loans?</p> <p>17 A. Yes.</p> <p>18 Q. And what efforts have you made?</p> <p>19 A. Like I said, we amassed a list, and</p> <p>20 not insignificant list and not insignificant</p> <p>21 amounts, proportionate to the people's</p> <p>22 compensation where it was a practice.</p> <p>23 You know, for some people for</p> <p>24 relocation, for some people for bonuses, for</p> <p>25 house purposes, for senior executives, senior</p>	<p>Page 425</p> <p>1 DONDERO - 10/29/21</p> <p>2 executives at the bank and board members at the</p> <p>3 bank in the seven-figure kind of numbers that</p> <p>4 were then subsequently forgiven.</p> <p>5 It is – I know we amassed more than</p> <p>6 a dozen examples that were significant and</p> <p>7 material.</p> <p>8 MR. MORRIS: Deborah, I apologize.</p> <p>9 It is certainly possible I missed it, but I</p> <p>10 don't recall seeing any list or any</p> <p>11 documents of any kind that Mr. Dondero has</p> <p>12 described.</p> <p>13 Have they been produced?</p> <p>14 MS. DEITSCH-PEREZ: I think so. I</p> <p>15 will double-check, but I believe that</p> <p>16 they're listed –</p> <p>17 MR. MORRIS: I know there is a list</p> <p>18 of – I apologize. I know there is a list</p> <p>19 of names in one of the discovery responses.</p> <p>20 But other than the list of names in the</p> <p>21 discovery response, I don't recall</p> <p>22 receiving any documents at all.</p> <p>23 MS. DEITSCH-PEREZ: No. And I think</p> <p>24 we asked you for the documents because we</p> <p>25 don't have access to the documents on</p>
<p>Page 426</p> <p>1 DONDERO - 10/29/21</p> <p>2 Highland's server. The only thing I can</p> <p>3 think of that we might owe you is there</p> <p>4 might be a few additional names to list in</p> <p>5 the interrogatory, and I will check whether</p> <p>6 that has been done.</p> <p>7 MR. MORRIS: Okay.</p> <p>8 Q. Mr. Dondero, you sign management</p> <p>9 representation letters in connection with</p> <p>10 Highland's audit each year; is that right?</p> <p>11 A. Yes.</p> <p>12 Q. Do you understand that you have an</p> <p>13 obligation when you sign the management</p> <p>14 representation to disclose to the auditor all</p> <p>15 agreements with affiliated entities and people</p> <p>16 that are deemed to be material?</p> <p>17 MS. DEITSCH-PEREZ: Object to the</p> <p>18 form.</p> <p>19 A. Generally, yes.</p> <p>20 Q. Okay. And is it your understanding</p> <p>21 that at least since 2008 Highland has disclosed</p> <p>22 to its auditors all agreements with affiliates</p> <p>23 that are material, as defined in the management</p> <p>24 representation letter?</p> <p>25 A. Yes.</p>	<p>Page 427</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And would that include any</p> <p>3 agreements to forgive loans that were deemed to</p> <p>4 be material amounts?</p> <p>5 A. No, because it is contingent in long</p> <p>6 term and speculative.</p> <p>7 Q. But at some point if it is forgiven</p> <p>8 would that be – would that be an event that</p> <p>9 would be disclosed to the auditor?</p> <p>10 A. Sure.</p> <p>11 Q. Okay. So is it fair to say that all</p> <p>12 loans that were deemed to be material to the</p> <p>13 extent they were forgiven were disclosed to the</p> <p>14 auditors?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. But, yeah, the only caveat I would</p> <p>18 put on it is we have such limited information</p> <p>19 regarding Cornerstone and Trust Life, which is</p> <p>20 part of my agreement with the Dugaboy trustee</p> <p>21 or with the majority of class A holders.</p> <p>22 They could have been sold in</p> <p>23 secrecy, without disclosure to us, such that</p> <p>24 the notes are all forgiven at this point, but</p> <p>25 we – we – we may never know.</p>

<p>Page 428</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So you can't rely on anything that</p> <p>3 you don't know; is that fair?</p> <p>4 A. Yeah.</p> <p>5 MS. DEITSCH-PEREZ: Objection to</p> <p>6 form.</p> <p>7 A. Yeah, we can't rely on things we</p> <p>8 don't know and we can't rely on the debtor to</p> <p>9 be honorable.</p> <p>10 Q. Well, the debtor has produced to</p> <p>11 you, sir, every single audited financial</p> <p>12 statement without redaction since 2008. Are</p> <p>13 you aware of that?</p> <p>14 A. That is actually news to me because</p> <p>15 we were asking for them a couple of months ago.</p> <p>16 That must be – that must be a new production.</p> <p>17 Q. No. Actually, it was produced to</p> <p>18 you way back in July. You are not aware of</p> <p>19 that?</p> <p>20 A. No, I'm looking –</p> <p>21 MS. DEITSCH-PEREZ: Hang on.</p> <p>22 A. I'm looking at Deborah. She'll –</p> <p>23 MS. DEITSCH-PEREZ: I will get the</p> <p>24 date.</p> <p>25 A. Yeah. I would love to see them.</p>	<p>Page 429</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So then – so then it – so is it</p> <p>3 fair to say, sir, that when you are describing</p> <p>4 this practice of forgiveness of loans, you are</p> <p>5 doing so without having reviewed any of the</p> <p>6 audited financial statements that Highland</p> <p>7 provided to your attorneys going back to 2008?</p> <p>8 MS. DEITSCH-PEREZ: Object to the</p> <p>9 form.</p> <p>10 A. What I'm saying, I guess, is that we</p> <p>11 haven't treated the loans as forgiven yet</p> <p>12 because if the condition precedent has been</p> <p>13 satisfied, we're not aware of it yet.</p> <p>14 Now, if there is something in those</p> <p>15 financial statements that will show that the</p> <p>16 condition precedent is satisfied, then we have</p> <p>17 a decision to make about the – or figure out</p> <p>18 what the mechanism is for forgiving the loans.</p> <p>19 Q. Are you saying that there are loans</p> <p>20 out there subject to forgiveness where the</p> <p>21 maker is somebody other than you or an entity</p> <p>22 that you control?</p> <p>23 A. No, I'm just – I'm talking about</p> <p>24 the 50 million of loans that we've been talking</p> <p>25 about.</p>
<p>Page 430</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. So – so I just want to go</p> <p>3 back and focus on your assertion that there was</p> <p>4 this practice of loan forgiveness. I think you</p> <p>5 have agreed with me that any loan that was</p> <p>6 forgiven in a material amount would be</p> <p>7 contained within the Highland audited financial</p> <p>8 statements; right?</p> <p>9 A. I believe they – material or not,</p> <p>10 they were all included in the Highland</p> <p>11 financials. Now, they might not have been</p> <p>12 specifically footnoted, you know.</p> <p>13 Like in other words, if we gave</p> <p>14 somebody half a million bucks to relocate and</p> <p>15 then forgave the loan, it might just be mixed</p> <p>16 with all other compensation in the line item.</p> <p>17 It might not have been listed separately</p> <p>18 because it would have been small relative to</p> <p>19 the overall financial statement.</p> <p>20 Q. But you're just speculating right</p> <p>21 now because, in fact, you haven't read the</p> <p>22 audited financial statements for the purpose of</p> <p>23 seeing whether or not there were loan – loans</p> <p>24 that were forgiven and disclosed; right?</p> <p>25 MS. DEITSCH-PEREZ: Object to the</p>	<p>Page 431</p> <p>1 DONDERO - 10/29/21</p> <p>2 form.</p> <p>3 A. Well, what I'm saying, just to be</p> <p>4 clear, is I haven't looked at the presentation</p> <p>5 of forgiven loans in the historic financials</p> <p>6 because I was unaware that we had gotten</p> <p>7 historic financials, but I am testifying that</p> <p>8 we had amassed at least a dozen, 15 material</p> <p>9 examples of material loan forgiveness amounts</p> <p>10 to different executives.</p> <p>11 Q. All right. Do you have any</p> <p>12 documentation to support your assertion of the</p> <p>13 practice of forgiving loans at Highland?</p> <p>14 A. Again, we have very, very little</p> <p>15 access to anything, and we didn't take anything</p> <p>16 with us that we weren't supposed to take, so we</p> <p>17 don't have any of that documentation.</p> <p>18 At NexBank, one of the sister</p> <p>19 companies that we still have full control over</p> <p>20 our records, we could show seven-figure-plus</p> <p>21 loans to senior management and the entire board</p> <p>22 of directors and forgiveness thereof as an</p> <p>23 example, but that – that is the only</p> <p>24 documentation that we would be able to present</p> <p>25 without having access to the records that you</p>

<p>Page 432</p> <p>1 DONDERO - 10/29/21</p> <p>2 guys are keeping from us.</p> <p>3 MR. MORRIS: I move to strike the</p> <p>4 last comment, and I take offense to it,</p> <p>5 sir. We're not withholding anything, okay.</p> <p>6 Q. Would the NexBank audited financial</p> <p>7 statements include a disclosure of the loans</p> <p>8 that you are describing?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So is it fair to say that if</p> <p>11 Highland forgave loans, it would be disclosed</p> <p>12 in its audited financial statements?</p> <p>13 MS. DEITSCH-PEREZ: Object, asked</p> <p>14 and answered.</p> <p>15 A. Well, just to be clear, these loans</p> <p>16 like the one up on the sheet, those were</p> <p>17 included in Highland's financials, those loans,</p> <p>18 just like the NexBank loans, when they were</p> <p>19 made to senior executives were included. But</p> <p>20 there wasn't a -- at NexBank there wasn't any</p> <p>21 kind of disclosure that said, these might be</p> <p>22 forgiven, or these are the terms that they</p> <p>23 would be forgiven under, just like there was no</p> <p>24 disclosure in the Highland financials that</p> <p>25 these are the terms that it might be forgiven</p>	<p>Page 433</p> <p>1 DONDERO - 10/29/21</p> <p>2 under, et cetera, et cetera.</p> <p>3 Q. It's certainly disclosed in the</p> <p>4 financials when it was forgiven. Will you --</p> <p>5 will you concede that point?</p> <p>6 A. Yes, sure.</p> <p>7 Q. Okay. Let's move on.</p> <p>8 Let's go to HCMS. Are you familiar</p> <p>9 with the notes at issue in the lawsuit that was</p> <p>10 commenced by Highland against HCMS?</p> <p>11 MS. DEITSCH-PEREZ: S or --</p> <p>12 A. S as in Services. Yes.</p> <p>13 MR. MORRIS: Okay. Can we please</p> <p>14 put up Exhibit 3.</p> <p>15 (Exhibit 3 marked.)</p> <p>16 MS. DEITSCH-PEREZ: Is that in the</p> <p>17 binder that you sent?</p> <p>18 MR. MORRIS: Yes, as Exhibit 3.</p> <p>19 MS. DEITSCH-PEREZ: Okay.</p> <p>20 MR. MORRIS: And if we could go to</p> <p>21 the Exhibits 1 through 4, okay.</p> <p>22 Q. Sir, we've put up on the screen</p> <p>23 Exhibit 1 to Exhibit 3, which is the complaint</p> <p>24 against HCMS. Do you see Exhibit 1 up on your</p> <p>25 screen?</p>
<p>Page 434</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yeah. This is the \$150,000</p> <p>3 promissory note; is that what that is?</p> <p>4 Q. Yes, sir.</p> <p>5 A. Okay. As long as I can see it on</p> <p>6 the screen, I don't need to find it in hard</p> <p>7 copy, do I?</p> <p>8 MS. DEITSCH-PEREZ: Yeah.</p> <p>9 MR. MORRIS: Can you scroll to the</p> <p>10 second page, P.J.</p> <p>11 Q. Is that your signature, sir?</p> <p>12 A. Close.</p> <p>13 Q. Are you aware that your signature is</p> <p>14 affixed to a \$150,000 promissory note that was</p> <p>15 made by HCMS to Highland Capital Management?</p> <p>16 A. Like I said --</p> <p>17 MS. DEITSCH-PEREZ: Objection, form.</p> <p>18 A. Like I said, it's close. I don't</p> <p>19 know if that is mine, but it's close.</p> <p>20 Q. Do you have any reason to believe</p> <p>21 that either you or somebody you authorized</p> <p>22 didn't sign this particular promissory note?</p> <p>23 A. Not specifically.</p> <p>24 MR. MORRIS: Okay. Can we go to the</p> <p>25 first page, please.</p>	<p>Page 435</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Did HCMS receive a loan from</p> <p>3 Highland in the amount of \$150,000 on March</p> <p>4 28th, 2018?</p> <p>5 A. I assume so.</p> <p>6 Q. Okay. You wouldn't have either</p> <p>7 signed or allowed your signature to be affixed</p> <p>8 to this document if you didn't understand that</p> <p>9 HCMS had received from Highland \$150,000;</p> <p>10 correct?</p> <p>11 A. This is one of the many things I</p> <p>12 would have signed on a given day.</p> <p>13 Q. Okay. And -- and are you aware that</p> <p>14 this note was given to Highland's auditors?</p> <p>15 A. It could. I'm not aware</p> <p>16 specifically, but it should be.</p> <p>17 Q. Okay. Do you have any recollection</p> <p>18 as to why HCMS obtained this loan from</p> <p>19 Highland?</p> <p>20 A. Unless it says it on these two</p> <p>21 pages, I have no idea.</p> <p>22 Q. Okay. Do you have any recollection</p> <p>23 as to what HCMS did with the proceeds of this</p> <p>24 loan?</p> <p>25 A. No.</p>

<p>Page 436</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. Let's just flip through the</p> <p>3 Exhibits 2, 3, and 4, if we could.</p> <p>4 Looking at Exhibit 2, is that your</p> <p>5 signature on Exhibit 2, sir?</p> <p>6 A. Again, it is close.</p> <p>7 Q. Okay. And do you have any reason to</p> <p>8 believe that that is either not your signature</p> <p>9 or that you did not authorize somebody to sign</p> <p>10 this on behalf of HCMS in June of 2018?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 MR. MORRIS: Can we go to Exhibit 3,</p> <p>14 please, and if we can go to the signature</p> <p>15 line.</p> <p>16 Q. Do you see that that is Frank</p> <p>17 Waterhouse?</p> <p>18 A. Yes.</p> <p>19 MR. MORRIS: Okay. And can we go to</p> <p>20 the page before that, the first page.</p> <p>21 Q. Frank Waterhouse was the treasurer</p> <p>22 of HCMS in May 2019; correct?</p> <p>23 A. That is what it said right on that</p> <p>24 thing we saw earlier; right?</p> <p>25 Q. Incumbency certificate.</p>	<p>Page 437</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. Yes.</p> <p>3 Q. Do you recall that HCMS borrowed</p> <p>4 \$400,000 from Highland in or around May 2019?</p> <p>5 A. Not specifically.</p> <p>6 Q. Do you have any reason to believe</p> <p>7 that it didn't?</p> <p>8 A. I have no knowledge – I have no</p> <p>9 knowledge of what it was used for and whether</p> <p>10 it did or didn't.</p> <p>11 MR. MORRIS: Okay. Let's go to the</p> <p>12 next exhibit, please.</p> <p>13 Q. Do you see Frank Waterhouse signed</p> <p>14 here on behalf of the maker, HCMS Services?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Are you aware that HCMS</p> <p>17 borrowed \$150,000 from Highland in June 2019?</p> <p>18 A. No.</p> <p>19 Q. Okay. Do you have –</p> <p>20 A. I'm not aware and –</p> <p>21 Q. Do you have –</p> <p>22 A. I didn't – I'm sorry, go ahead. I</p> <p>23 was just saying, looking at Frank's signature,</p> <p>24 you know, we're switching from me signing to</p> <p>25 Frank signing. And I guess we're saying Frank</p>
<p>Page 438</p> <p>1 DONDERO - 10/29/21</p> <p>2 is an authorized signatory, although if you</p> <p>3 look at Frank's, it looks like an automated</p> <p>4 signature versus, you know, an actual</p> <p>5 signature, but I assume you went over this with</p> <p>6 him, but I don't have specific knowledge of</p> <p>7 these at all.</p> <p>8 Q. And do you know that Mr. Waterhouse</p> <p>9 from time to time used an electronic signature?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I believe he did.</p> <p>13 Q. And you saw – you have seen his</p> <p>14 electronic signature on other documents; is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. So it doesn't surprise you to see</p> <p>18 his electronic signature on a note; correct?</p> <p>19 A. Yeah. Yeah, okay. Yeah, I don't</p> <p>20 know. But whether or not he did it or somebody</p> <p>21 else did it or – we're just getting a little</p> <p>22 far afoot from me signing it; right? That is</p> <p>23 all.</p> <p>24 Q. Right.</p> <p>25 A. To – Frank – Frank may have signed</p>	<p>Page 439</p> <p>1 DONDERO - 10/29/21</p> <p>2 it. He may have done it electronically or</p> <p>3 somebody may have done it electronically for</p> <p>4 him. Those are just different answers than me</p> <p>5 signing it; right?</p> <p>6 Q. Okay. And – and that is fair.</p> <p>7 Are you aware that on December 3rd,</p> <p>8 2020, Highland made a demand upon HCMS for</p> <p>9 payment under these four notes that we have</p> <p>10 just looked at?</p> <p>11 A. I knew there was a demand on the</p> <p>12 NexPoint one. Can you refresh me on this one?</p> <p>13 Q. Sure.</p> <p>14 MR. MORRIS: Can we go to the next</p> <p>15 exhibit in Exhibit 3. Exhibit 5.</p> <p>16 Q. You will see that there is a letter</p> <p>17 dated December 3rd, 2020, from Mr. Seery to</p> <p>18 HCMS?</p> <p>19 A. Yep.</p> <p>20 Q. And do you see that it was sent to</p> <p>21 the attention of Mr. Waterhouse?</p> <p>22 Do you see that, sir?</p> <p>23 A. Yes, yep.</p> <p>24 Q. And, again, Mr. Waterhouse at that</p> <p>25 time was the treasurer of HCMS to the best of</p>



<p>Page 440</p> <p>1 DONDERO - 10/29/21</p> <p>2 your recollection; correct?</p> <p>3 A. He primarily was the CFO of</p> <p>4 Highland. But, yes, I mean, I do see that.</p> <p>5 Q. Okay. And did you learn on or</p> <p>6 around December 3rd that Highland had made</p> <p>7 demand upon HCMS for payment of all outstanding</p> <p>8 principal and interest due under the four</p> <p>9 demand notes that are listed on the page there?</p> <p>10 A. Yes, yep.</p> <p>11 Q. So you knew that at the time; right?</p> <p>12 A. Well, more importantly I knew they</p> <p>13 were all subject to the same forgiveness</p> <p>14 provisions as the other note.</p> <p>15 Q. Okay. So I move to strike.</p> <p>16 You knew in December 3rd, 2020, that</p> <p>17 Highland made demand; correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And do you see that Highland</p> <p>20 gave HCMS an eight-day grace period or until</p> <p>21 December 11th, 2020, to make payment?</p> <p>22 A. Yes.</p> <p>23 Q. Under the demand note do you have</p> <p>24 any understanding that Highland was required to</p> <p>25 give any grace period at all?</p>	<p>Page 441</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I don't know.</p> <p>3 MS. DEITSCH-PEREZ: Object to the</p> <p>4 form.</p> <p>5 Q. Do you know whether HCMS ever</p> <p>6 responded to this demand letter prior to the</p> <p>7 commencement of litigation?</p> <p>8 A. I don't know.</p> <p>9 Q. Prior to the commencement of</p> <p>10 litigation, did you discuss with anyone whether</p> <p>11 HCMS should respond to Highland's demand</p> <p>12 letter?</p> <p>13 A. Did I discuss with anyone? No, I</p> <p>14 don't remember – I don't remember talking</p> <p>15 about this with Frank at all where –</p> <p>16 MS. DEITSCH-PEREZ: And I'm just</p> <p>17 going to stop you to make sure you don't</p> <p>18 blurt out any privileged communications, if</p> <p>19 there are any.</p> <p>20 We object to the disclosure. But</p> <p>21 with that caveat, go ahead.</p> <p>22 A. I'm sorry, repeat the question</p> <p>23 again. Let me try and keep it simple here.</p> <p>24 Q. Sure. It may be my fault.</p> <p>25 Mr. Dondero, you testified that you</p>
<p>Page 442</p> <p>1 DONDERO - 10/29/21</p> <p>2 were aware that Highland made a demand for</p> <p>3 payment on these four notes; correct?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Did you have any</p> <p>6 non-privileged communications at any time after</p> <p>7 Highland sent this letter about whether and how</p> <p>8 HCMS should respond?</p> <p>9 A. You know, let me just – let me</p> <p>10 adjust the prior answer for a second.</p> <p>11 I'm aware that this letter was sent.</p> <p>12 I'm not sure I knew contemporaneously or when I</p> <p>13 knew the letter was sent. I can't – I have no</p> <p>14 recollection of receiving it at the time.</p> <p>15 And to answer your question, I can't</p> <p>16 recollect talking to Frank or anybody else</p> <p>17 about it at the time. I'm not sure I knew</p> <p>18 about it at the time. But I have – I don't</p> <p>19 have any recollection of discussing it with</p> <p>20 anybody at or around the time.</p> <p>21 Q. Did you ever instruct anybody at any</p> <p>22 time to respond to this letter, whenever it is</p> <p>23 you learned about it?</p> <p>24 A. No.</p> <p>25 Q. Do you know if anyone acting on</p>	<p>Page 443</p> <p>1 DONDERO - 10/29/21</p> <p>2 behalf of HCMS ever informed Highland of HCMS'</p> <p>3 defenses to the – to the demand letter prior</p> <p>4 to the commencement of litigation?</p> <p>5 A. Yeah, Frank would be the person to</p> <p>6 ask there. I don't know.</p> <p>7 Q. I'm just asking you. Prior to the</p> <p>8 commencement of litigation, did you ever</p> <p>9 instruct anyone to inform Highland that the</p> <p>10 HCMS notes were subject to oral agreements with</p> <p>11 the Dugaboy trustee?</p> <p>12 A. I believe former Judge Lynn sent a</p> <p>13 letter in that regard. But other than that, I</p> <p>14 don't remember talking to anybody – I don't</p> <p>15 remember talking to the debtor about it per se.</p> <p>16 Q. It is your recollection that</p> <p>17 Judge Lynn sent a letter to Highland before the</p> <p>18 commencement of litigation, putting Highland on</p> <p>19 notice that the HCMS notes were the subject of</p> <p>20 oral agreements between you and the Dugaboy</p> <p>21 trust.</p> <p>22 Do I have that right?</p> <p>23 A. Yeah, that they were part of</p> <p>24 forgiveness or compensation or something. He</p> <p>25 sent a letter in that regard.</p>

<p>Page 444</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. And was this part of a settlement</p> <p>3 discussion or was this in response to this</p> <p>4 demand letter?</p> <p>5 A. I don't know.</p> <p>6 Q. Have you produced that letter in</p> <p>7 discovery?</p> <p>8 MS. DEITSCH-PEREZ: I'm aware that</p> <p>9 you have the letter. I don't know if it</p> <p>10 was attached to something, but I know you</p> <p>11 have it.</p> <p>12 MR. MORRIS: Because you produced it</p> <p>13 in discovery or because Mr. Dondero is</p> <p>14 testifying that his recollection was that</p> <p>15 Mr. Dondero sent this letter to the debtor?</p> <p>16 MS. DEITSCH-PEREZ: The – the</p> <p>17 letter has either been produced or was</p> <p>18 attached to something or was used in a</p> <p>19 deposition, but I am aware that you have</p> <p>20 it. If you need it to be Bates stamped, we</p> <p>21 could do that.</p> <p>22 MR. MORRIS: I definitely need it to</p> <p>23 be Bates stamped, I do, because I'm not</p> <p>24 aware of this particular letter. But I</p> <p>25 appreciate that.</p>	<p>Page 445</p> <p>1 DONDERO - 10/29/21</p> <p>2 MR. RUKAVINA: This is Davor.</p> <p>3 Couple things, John – and I apologize for</p> <p>4 interjecting. I have not made an</p> <p>5 appearance yet today. Deborah has been</p> <p>6 objecting for everyone.</p> <p>7 Thomas Berghman will take over</p> <p>8 around 3:00 o'clock. Is that okay with</p> <p>9 you, John?</p> <p>10 He is probably just going to sit</p> <p>11 here and not object.</p> <p>12 MR. MORRIS: I will miss you and I</p> <p>13 hope you have safe travels.</p> <p>14 MR. RUKAVINA: Okay. Thank you very</p> <p>15 much.</p> <p>16 And, second, I think that the letter</p> <p>17 that is being referred to is the email</p> <p>18 letter, so I have produced it to you.</p> <p>19 With that, thank you everyone.</p> <p>20 MR. MORRIS: Okay. Take care.</p> <p>21 Q. Did anyone – did you ever instruct</p> <p>22 anyone in December 2020 to make the payments</p> <p>23 that Highland demanded under the HCMS notes?</p> <p>24 MS. DEITSCH-PEREZ: The demand notes</p> <p>25 that are listed here on the Exhibit 5?</p>
<p>Page 446</p> <p>1 DONDERO - 10/29/21</p> <p>2 MR. MORRIS: Yes.</p> <p>3 A. Yes, not that I recall.</p> <p>4 Q. Did you ever instruct anyone in</p> <p>5 December 2020 not to make the payments that</p> <p>6 Highland demanded that are listed in this</p> <p>7 exhibit?</p> <p>8 A. No.</p> <p>9 Q. Do you know why HCMS did not make</p> <p>10 the payments that Highland demanded under the</p> <p>11 notes?</p> <p>12 A. Again, beyond compensation</p> <p>13 forgiveness argument, no.</p> <p>14 MR. MORRIS: Okay. Let's go to the</p> <p>15 next exhibit, 6.</p> <p>16 (Exhibit 6 marked.)</p> <p>17 Q. And this is another one of the term</p> <p>18 notes; right?</p> <p>19 A. Yes.</p> <p>20 MR. MORRIS: And can we just go to</p> <p>21 the signature line, please.</p> <p>22 Q. Is that your signature, sir?</p> <p>23 A. That looks more like it.</p> <p>24 Q. And do you – are you willing to</p> <p>25 agree that you signed this promissory note in</p>	<p>Page 447</p> <p>1 DONDERO - 10/29/21</p> <p>2 favor of Highland on May 31st, 2017?</p> <p>3 A. Yes.</p> <p>4 Q. And is it fair to say you didn't</p> <p>5 read this note before you signed it?</p> <p>6 A. Correct. No reason to, really.</p> <p>7 Q. Okay. So it is fair to say that</p> <p>8 there is not a provision of this note that you</p> <p>9 didn't understand before you signed it;</p> <p>10 correct?</p> <p>11 MS. DEITSCH-PEREZ: Object to the</p> <p>12 form.</p> <p>13 A. That I didn't review it, so</p> <p>14 therefore I didn't have a opinion one way or</p> <p>15 the other.</p> <p>16 Q. Okay. This note substituted and</p> <p>17 superseded for the promissory notes that are</p> <p>18 set forth on Exhibit A to this document;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. So just like NexPoint and HCMS, HCRE</p> <p>22 also consolidated their outstanding demand</p> <p>23 notes into one term notes at the end of</p> <p>24 May 2017; right?</p> <p>25 A. Yep.</p>

<p>Page 448</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. Okay. Let's go to HCRE, if we can</p> <p>3 take this down and put up Exhibit 4.</p> <p>4 Actually, before we go to that, do</p> <p>5 you have any recollection as to why HCRE</p> <p>6 borrowed money from Highland in the amounts</p> <p>7 equal to the prior notes as set forth to the</p> <p>8 exhibit to the term note?</p> <p>9 A. Nope.</p> <p>10 Q. Do you have any recollection at all</p> <p>11 as to what HCRE did with the proceeds of the</p> <p>12 loans that it obtained from Highland?</p> <p>13 A. No.</p> <p>14 Q. This is Exhibit 4, so this is the</p> <p>15 complaint – this is actually the complaint</p> <p>16 against HCRE.</p> <p>17 MR. MORRIS: Can we go to Exhibit 6,</p> <p>18 please.</p> <p>19 MS. DEITSCH-PEREZ: Exhibit 6 of</p> <p>20 Exhibit 4?</p> <p>21 MR. MORRIS: No, I apologize. That</p> <p>22 was my mistake. Yes, Exhibit 6 to Exhibit</p> <p>23 4.</p> <p>24 MS. DEITSCH-PEREZ: Okay. If you</p> <p>25 want the hard copy, it is in a booklet.</p>	<p>Page 449</p> <p>1 DONDERO - 10/29/21</p> <p>2 Otherwise, she is pulling it up.</p> <p>3 Q. So this is the last of the three</p> <p>4 term notes. Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Also signed on May 31st, 2017;</p> <p>7 correct?</p> <p>8 A. Yes.</p> <p>9 Q. And if we could look at the</p> <p>10 signature line, is that your signature, sir?</p> <p>11 A. Yes.</p> <p>12 Q. And did you sign this note on behalf</p> <p>13 of HCRE on or about May 31st, 2017?</p> <p>14 A. Yes.</p> <p>15 Q. Did you read this note before you</p> <p>16 signed it?</p> <p>17 A. No.</p> <p>18 Q. And since you didn't read it, is it</p> <p>19 fair to say that there wasn't a provision of</p> <p>20 this agreement that you didn't understand at</p> <p>21 the time that you signed it?</p> <p>22 MS. DEITSCH-PEREZ: Object to the</p> <p>23 form.</p> <p>24 A. There is – there wasn't a</p> <p>25 provisions I did or didn't understand because I</p>
<p>Page 450</p> <p>1 DONDERO - 10/29/21</p> <p>2 didn't review it.</p> <p>3 Q. Okay. This note substituted and</p> <p>4 superseded for the promissory notes that are</p> <p>5 listed on Exhibit A on the right side of the</p> <p>6 page; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And Exhibit A set forth the</p> <p>9 outstanding principal and interest that HCRE</p> <p>10 owed to Highland under the prior notes as of</p> <p>11 May 31st, 2017; correct?</p> <p>12 A. Uh-huh.</p> <p>13 Q. That is a yes, sir; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Do you know why HCRE borrowed</p> <p>16 the money from Highland at the times and – and</p> <p>17 in the amounts set forth on Exhibit A to the</p> <p>18 promissory note?</p> <p>19 A. No.</p> <p>20 Q. Do you have any recollection as to</p> <p>21 what HCRE did with the proceeds of the loans</p> <p>22 that they had obtained from Highland between</p> <p>23 January 2014 and April 2015?</p> <p>24 A. No.</p> <p>25 Q. Can we call the three term notes</p>	<p>Page 451</p> <p>1 DONDERO - 10/29/21</p> <p>2 that were signed by NexPoint, HCRE, and HCMS on</p> <p>3 May 31st, 2017 collectively as the term notes?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. You had the authority to sign</p> <p>6 each of the term notes on behalf of each of the</p> <p>7 respective makers; correct?</p> <p>8 A. Yes.</p> <p>9 Q. Each of the term notes was for a</p> <p>10 30-year term; correct?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. Who decided to give each note</p> <p>13 a 30-year term, if you know?</p> <p>14 A. The auditors, the accountants, not</p> <p>15 me.</p> <p>16 Q. But you knew that each of the notes</p> <p>17 was for a 30-year term; is that fair?</p> <p>18 A. Yes, I guess, yes.</p> <p>19 Q. Notes were unsecured; right?</p> <p>20 A. Yes.</p> <p>21 Q. And the notes were not the product</p> <p>22 of any negotiations; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Is it fair to say that none of the</p> <p>25 makers of the term notes ever sought financing</p>

<p>Page 452</p> <p>1 DONDERO - 10/29/21</p> <p>2 from a third party as an alternative to the</p> <p>3 Highland notes?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. You don't have any reason to</p> <p>6 believe that an unrelated third party would</p> <p>7 have loaned money to NexPoint, HCRE, and HCMS</p> <p>8 on the terms set forth in each of the term</p> <p>9 notes, do you?</p> <p>10 MS. DEITSCH-PEREZ: Object to the</p> <p>11 form.</p> <p>12 A. I – it is not fair to draw that</p> <p>13 conclusion. You know, particularly NexPoint</p> <p>14 has borrowed a lot of money at much lower rates</p> <p>15 at or around 2017 and later, and to this day.</p> <p>16 Q. So then why –</p> <p>17 A. The same thing with HCRE.</p> <p>18 Q. So then why would HCRE and NexPoint</p> <p>19 enter into these loans rather than obtaining</p> <p>20 loans at lower interest rates if they were</p> <p>21 available?</p> <p>22 A. These are soft loans, again, so</p> <p>23 they're – especially affiliate soft loans to</p> <p>24 other creditors are viewed almost as equity or</p> <p>25 subordinated to senior secured mortgages or</p>	<p>Page 453</p> <p>1 DONDERO - 10/29/21</p> <p>2 other financings that NexPoint and HCRE did.</p> <p>3 So I would say that is – that is the reason.</p> <p>4 Q. Are you saying that Highland today</p> <p>5 really has equity interests in NexPoint, HCRE,</p> <p>6 and HCMS?</p> <p>7 MS. DEITSCH-PEREZ: Object to the</p> <p>8 form.</p> <p>9 A. Yeah, no, I didn't say that. I'm</p> <p>10 saying it has subordinated debt interest, but</p> <p>11 they are soft notes, so they're viewed as</p> <p>12 deeply subordinated equity-ish, so to speak, as</p> <p>13 far as the senior secured debtholders are</p> <p>14 concerned.</p> <p>15 Q. Well, that would be true of any</p> <p>16 senior secured debt relative to unsecured debt;</p> <p>17 isn't that right?</p> <p>18 A. Yes, but again, these are</p> <p>19 particularly soft notes, you know.</p> <p>20 Q. Okay. At the time you signed these</p> <p>21 notes, were you aware that each of the term</p> <p>22 notes required payment of an annual installment</p> <p>23 on December 31st of each year?</p> <p>24 MS. DEITSCH-PEREZ: Object to the</p> <p>25 form.</p>
<p>Page 454</p> <p>1 DONDERO - 10/29/21</p> <p>2 A. I knew there was more required</p> <p>3 periodic payments than historically, and that</p> <p>4 was part of – partly driven by the – the</p> <p>5 auditors, I believe.</p> <p>6 THE WITNESS: You know what, can</p> <p>7 we – can we take a break for like five or</p> <p>8 10 minutes, and then, you know, at most –</p> <p>9 at most I've got another hour in me today,</p> <p>10 and then so we could just work on when it</p> <p>11 fits on everybody else's calendar if we</p> <p>12 can't wrap up in an hour, okay?</p> <p>13 MR. MORRIS: No problem,</p> <p>14 Mr. Dondero. So the time now is what –</p> <p>15 what time do we have?</p> <p>16 VIDEOGRAPHER: Off the record, 2:56.</p> <p>17 (Recess taken 2:56 p.m. to 3:19 p.m.)</p> <p>18 VIDEOGRAPHER: Back on the record,</p> <p>19 3:19.</p> <p>20 Q. Are you ready to proceed, sir?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Did you speak with anybody</p> <p>23 during the break about the substance of this</p> <p>24 deposition?</p> <p>25 A. No.</p>	<p>Page 455</p> <p>1 DONDERO - 10/29/21</p> <p>2 Q. So we were just looking at the third</p> <p>3 in the series of term notes, and if we can go</p> <p>4 to the – I apologize, the first page of this</p> <p>5 one, just to refresh your recollection after</p> <p>6 the break that this is the term note that was</p> <p>7 executed by you on behalf of HCRE Partners on</p> <p>8 May 31st, 2017.</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. And I looked at Paragraph 5</p> <p>12 before, but I just want to make sure, you're</p> <p>13 telling me that you didn't read this before you</p> <p>14 signed it, do I have that right, Paragraph 5?</p> <p>15 A. Yes.</p> <p>16 Q. And so you are unaware – when did</p> <p>17 you first – when did you first become aware of</p> <p>18 the provision that is set forth in Paragraph 5?</p> <p>19 MS. DEITSCH-PEREZ: Object to the</p> <p>20 form.</p> <p>21 A. I don't know.</p> <p>22 Q. Okay. Was it before or after the</p> <p>23 commencement of the litigation?</p> <p>24 A. I don't know.</p> <p>25 Q. Okay. NexPoint didn't make the</p>